

QUARTERLY REPORT
of the
ATTORNEY GENERAL
of
ALABAMA

For the Period
January 1, 1951
Through March 31, 1951

Volume No. 62

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICIALS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1951, through March 31, 1951, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State; and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

SI GARRETT,

Attorney General.

Attorney General:

Si Garrett

Assistant Attorneys General:

J. W. Arbuthnot
Lee Edward Barton
A. A. Carmichael
Thomas M. Galloway
Wallace L. Johnson
William N. McQueen
M. Roland Nachman
Thomas F. Parker
James L. Screws
Robert Straub
Bernard F. Sykes

Assistant Attorney General assigned to the Department of
Agriculture and Industries:

George O. Miller, Jr.

Assistant Attorney General assigned to the Department of
Conservation:

A. J. Harris

Assistant Attorney General assigned to the Department of
Examiner of Public Accounts:

James T. Hardin

Assistant Attorney General assigned to the Department of Finance:

Randolph G. Lurie

Assistant Attorneys General assigned to the Department of
Revenue:

H. Grady Tiller
Willard W. Livingston
William H. Burton, Jr.

Confidential Secretary:

Mrs. Dorothy G. Johnson

OPINIONS

January 2, 1951

Hon. A. R. Meadows,
State Superintendent of Education,
C A P I T O L

Schools—School Funds—Federal Grants.

1. The State Board of Education, acting by and through the State Superintendent of Education, who likewise serves as Chief Executive Officer of such Board, may make application for funds authorized in Title 1, Public Law 815—81st Congress, for use in the State survey and plans for school construction. Title 52, Section 23, Code of Alabama 1940; Act No. 644, General Acts 1949, page 986.

2. The State Treasurer is authorized to receive grants of funds made pursuant to Public Law 815, supra, as official custodian thereof, and may disburse same upon proper warrant or order of the State Board of Education, acting by and through its Chief Executive Officer, the State Superintendent of Education. Title 52, Section 23, Code of Alabama 1940; Act No. 644, General Acts 1949, page 986.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of December 14, 1950, is as follows:

"Public Law 815—81st Congress, approved September 23, 1950, provides through Title I an appropriation to be used for making payments to States whose applications for survey funds have been approved. One of the conditions for approval is the requirement of an opinion of the State Attorney General showing first, the existence of the authority and responsibility for the State educational agency or official to make and file applications for federal grants under Title I, P. L. 815; and second, the authority of the agency or official named by the applicant to receive such grants.

"Title I, P. L. 815, Section 210, Paragraph 13, states that 'The term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.' Section 262, Constitution of Alabama 1901, states that 'The supervision of the public schools shall be vested in a Superintendent of Education, whose powers, duties, and compensation shall be fixed by law.' Section 61, Title 52, Code of Alabama 1940 provides for the State Superintendent of Education to make the studies called for in Title I, P. L. 815. Sections 14, 44 and 45, Title 52, Code of Alabama 1940 set forth the duties of the State Superintendent of Education. Section 23, Title 52, Code of Alabama 1940, and Act No. 644, approved September 19, 1949, provide for the Treasurer of the State of Alabama to accept from the Federal Government any grant, appropriation, or allocation of federal funds to the State of Alabama for education purposes.

"In making application for federal funds under Title I, P. L. 815, your opinion is sought on the following questions:

"1. Is the State Superintendent of Education authorized to make and file application for federal grants for the school facilities survey and to

carry out the purposes of Section 101, Title I, P. L. 815, as the official primarily responsible for the supervision of the public elementary and secondary schools of Alabama?

"2. Is the Treasurer of the State authorized to receive federal grants made under Title I, P. L. 815, as official custodian thereof, with the power to disburse said funds upon the proper warrant or order of the State Superintendent of Education?

"Your answers to these questions will be appreciated."

Under the statutes of this State, the State Board of Education is vested with general control and supervision of the public schools of the State, with the exception of the University of Alabama and Alabama Polytechnic Institute. This control and supervision is exercised through the State Superintendent of Education and his professional assistants, such officer likewise serving as the chief executive officer of the State Board of Education. Title 52, Section 14, Code of Alabama 1940. Likewise by constitutional and statutory provision, the actual, active supervision of the public schools of the State is vested in the Superintendent of Education, Section 262, Constitution of Alabama 1901, providing that:

"§ 262. The supervision of the public schools shall be vested in a superintendent of education whose powers, duties, and compensation, shall be fixed by law."

The further and more specific duties and powers of the State Superintendent of Education are to be found within Title 52, Sections 41-61, Code of Alabama 1940, it being provided, among other things, that said State Superintendent shall execute the educational policy of the State Board of Education, Section 45, *supra*.

We are here concerned with an interpretation of the above provisions of law in conjunction with the terms and provisions of Public Law 815—81st Congress, approved September 23, 1950. This Federal Act relates to the construction of school facilities in areas affected by Federal activities, and to certain other educational purposes therein stated. Title I of such act provides for the allocation of Federal funds to State applicants to be used in making State surveys and plans for school construction. As a condition for approval of any State application, it is provided that said application must designate the State educational agency, as defined in paragraph 13 of Section 210 of said act, as the sole agency for carrying out the purposes of the act. Paragraph 13 of Section 210 provides as follows:

"The term 'state educational agency' means the officer or agency primarily responsible for the state supervision of public elementary and secondary schools."

Your inquiry directs itself to the question of who should be the signatory to any application for such funds for and on behalf of the State of Alabama.

In addition to the constitutional and statutory provisions of this State, above cited, it is my judgement that consideration must also be given Act No. 644, General Acts 1949, page 986, which act was approved under date of September 19, 1949. Among other things, this latter act provides that:

"Section 1. The State Treasurer is hereby authorized and empowered to accept from the Federal government or any instrumentality thereof, in the name of and for the State of Alabama any grant from the Federal government or any appropriation made by the Congress of the United

States or any allocation of Federal Funds appropriated by the Congress of the United States to the State of Alabama for the purpose of assisting the State in financing a minimum foundation program of public elementary and secondary schools, and in reducing inequalities of educational opportunities through public elementary and secondary schools, and for the general welfare and other purposes. The Treasurer is hereby required to make the necessary reports; provided that any or all such acceptances or conditions shall not be contrary to the Constitution of Alabama.

"Section 2. The State Board of Education is hereby designated as State Agency in the administration, distribution and supervision of the expenditure of any funds herein provided and is hereby authorized and empowered, in so far as it is not specifically prohibited by the Constitution of Alabama to meet the terms of such grants, appropriations or allocations and is hereby authorized to establish the necessary rules and regulations governing the allocation of funds derived from such grants, appropriations or allocations to county and city boards of education in the State and to set the conditions upon which local school systems may receive and expend such allocations it being the intent of this Act to permit the State of Alabama to participate fully in any or all grants, appropriations or allocations made available to it by the Federal government or any instrumentality thereof for public elementary and secondary schools."

It would appear from this latter act that the Legislature has heretofore designated as the State educational agency for the administration, distribution and supervision of Federal funds allocated the State of Alabama, the State Board of Education. Like authority is to be found within Title 52, Section 23, Code of Alabama 1940.

From all of the above, it is my opinion that the general supervision of the public schools of the State is vested in the State Board of Education, exercising such authority by and through the State Superintendent of Education and his professional assistants; that the actual, active supervision of such schools is vested in the State Superintendent of Education, who executes the educational policy of the State Board of Education, and, lastly, that the legislature of the State has heretofore designated the State Board of Education as the State educational agency charged with the administration, distribution and supervision of Federal funds allocated this State for educational purposes. This leads me to the conclusion, with reference to your first inquiry, that you may make application for funds for the State of Alabama pursuant to the provisions of Public Law 815, supra, but that you should do so in the name of the State Board of Education. In other words, the applicant should be the State Board of Education with such application being made by yourself, in the name of such Board, by virtue of your office as State Superintendent of Education and Chief Executive Officer of the State Board of Education. Such would, it appears to me, satisfy all of the provisions of our Constitution, statutes and acts, as well as the terms of Public Law 815, supra.

With reference to your second inquiry, I need only refer you to Section I of Act 644, supra, above quoted. The terms of such act definitely designate, authorizes and empower the State Treasurer to accept from the Federal Government, or any instrumentality thereof, in the name of and for the State of Alabama, any grant from the Federal Government, or any appropriation made by the Congress of the United States, or any allocation of Federal funds appropriated by the Congress of the United States to the State of Alabama for educational purposes. Here again see the statutory provisions of Title 52, Section 23, supra, which are to like effect.

I am, therefore, clearly of the opinion that the State Treasurer is authorized to receive Federal grants made pursuant to Title I, Public Law 815, supra, as official custodian thereof, and that he may disburse such funds upon proper warrant or order of the State Board of Education, acting through yourself as State Superintendent of Education.

Very truly yours,

A. A. CARMICHAEL
Attorney General

January 6, 1951

Hon. Hunter Phillips
Judge of Probate
Choctaw County
Butler, Alabama

Counties — Roads and Bridges — Vacation.

1. Under the authority of Title 56, Section 21, Code of Alabama 1940, the Circuit Court, in Equity, may, under proper circumstances at the suit of all abutting land owners and others holding property rights or interest, vacate a public roadway.

2. When any public roadway has been properly vacated by decree of the Circuit Court, in Equity, the county governing body may not "reopen" such roadway, but may, should circumstances ever so warrant, establish another and new public roadway in and through such area after first acquiring right of way to same. Title 12, Section 11, Code of Alabama 1940.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of November 4, 1950, is as follows:

"Many years ago there was a warehouse located on the Tombigbee River at LeNoir's landing. During the time that this warehouse was doing business there was a public road leading to same. Since the discontinuation of the warehouse there was still a road leading to the river from another public road about one-half mile away. For several years the County discontinued working this road. On the 5th day of August, 1947, the abutting land owner (same owner owning both sides of the road) filed a petition with the Court of County Commissioners of Choctaw County to close the road. The Commissioners denied the petition.

"On the 11th day of August, 1947, the abutting land owner filed a petition with the Judge of the Circuit Court, sitting in Equity, to close the road. This petition was filed under Title 56, Section 21 of the 1940 Code. The Circuit Court assumed jurisdiction of this proceeding and on the 12th day of April, 1948, rendered the following decree, a copy of which is attached.

"On the 12th day of August, 1950, some of the citizens of that community filed a petition with the Court of County Commissioners of Choctaw County, Alabama, to reopen this road. The Court of County Commissioners on the 12th day of September, 1950, entered an order denying the petition on the ground that they had lost jurisdiction over the subject matter.

"The Court of County Commissioners desire your opinion on the following questions.

"1. Since the Circuit Court, in Equity, assumed jurisdiction on the subject matter and entered an order closing this road, does the Court of County Commissioners have the right at this time to entertain a petition to re-open this road since the conditions and circumstances have not been altered since the decree of the Circuit Court, in Equity?

"2. If you hold that the said Court of County Commissioners does have jurisdiction in this matter, is it necessary that a new petition be presented to the County Commissioners, or would they be governed by their previous orders?"

I am of the opinion that, in view of the final decree of the Circuit Court of Choctaw County, in Equity, found attached to your request for opinion, the county governing body is without authority to reopen the roadway here in question.

As you have indicated, the proceedings in the Circuit Court were had under the provisions of Title 56, Sections 21-25, Code of Alabama 1940. Although the language of these statutes would seem to expressly confer upon a court of equity the jurisdiction and authority to vacate the annul a public roadway when all the owners of property attigent thereupon, and the political subdivision in which the roadway is located are parties to the litigation, such is not always the case. Indeed, the power and authority granted the court by the terms of such statutes is somewhat less than the language thereof would indicate. Section 21, *supra*, has received the consideration of the Supreme Court of Alabama in the case of *Thetford v. Town of Cloverdale*, 217 Ala. 241, 115 So. 165, and *Tally v. Wallace, et al*, 39 So. 2d. 672, and the Court has stated that the provisions of such statute are inefficacious to empower a court of equity to vacate a public right of way where the owners of abutting property do not consent and no provision is made to compensate them for the property rights of which they would be deprived. No such provision is to be found within the above statutes.

However, a careful study of the factual situation presented by your request, as well as the attached copy of the decree of the Circuit Court, convinces me that the instant decree is valid and binding upon the parties thereto. Both from your request and said decree it would appear that all abutting land owners, or any others who might be deprived of any property rights, have joined in the petition seeking the vacation of said roadway, nor would it appear that the governing body of the local political subdivision (Choctaw County) has attempted to defend against said petition nor to attack the validity of said final decree. I am, therefore, of the opinion that said decree is valid and binding and that said roadway is now vacated, and any right that that was vested in the public by the use of said road is now vested in the petitioner — land owners. Further, that any rights heretofore vested in the county or public are now vested in the land owners, and that such roadway is now the private property of the abutting land owners with no right vested in the public or the county to use same as public property.

It is true that under the provisions of Title 12, Section 11, Code of Alabama 1940, the county governing body possesses original and unlimited juris-

diction in relation to the establishment, change, or discontinuance of roads, bridges, causeways, ferries, and stock law districts within the county, **except where otherwise provided by law with such authority to be exercised in conformity with the other provisions of the Code of Alabama.** Likewise, under the terms of Title 23, Section 43, Code of Alabama 1940, the governing bodies of the respective counties are vested with broad powers with respect to the public roads of the county. However, these powers must be constructed and exercised in conjunction with the other statutes of the State pertaining to this particular subject.

Considering all of such provisions with relation to one another, it is my opinion that the roadway here in question has been vacated by competent authority in conformity with the statutes and laws of this State and cannot now be "reopened" by order of the county governing body of Choctaw County. Such conclusions is in no sense to be considered an impairment of the power or authority of such county governing body to establish, change, or discontinue, roads of the county, and, if at some future date circumstances should so warrant, I am of the opinion that the county governing body could establish a roadway in and through this particular area. However, such would constitute the establishment of a new road rather than the "reopening" of the now vacated roadway. In such event, all processes and procedure pertaining to the establishment of a new roadway, including the securing of a right of way, either by purchase or condemnation, would have to be satisfied.

Very truly yours,

A. A. CARMICHAEL
Attorney General

January 8, 1951

Hon. G. W. Hurst, Sr.
Mayor, Town of Chatom
Washington County
Chatom, Alabama

Municipalities — Alabama Alcoholic Beverage Control Board.

A municipality is entitled to share in the distribution of the profits of the Alabama Liquor Stores under the provisions of Section 2 of Act No. 255, General Acts 1943, page 226, from the date of its incorporation.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of August 21, 1950, is as follows:

"In February, 1949, the Town of Chatom, Alabama, was incorporated after an election was held to determine the sentiment of the voters within said town. Following the said election which resulted in an overwhelming vote in favor of incorporation, the Judge of Probate in and for Washington County, Alabama, rendered a decree declaring the said Town of Chatom to be an incorporated municipality. Within a few days

after this said court decree was rendered, a certified copy of the same was forwarded to the office of the Secretary of State in Montgomery, Alabama, to be placed on record in that office.

"The Town of Chatom, Alabama, has never received any part of the distribution of the proceeds from the ABC stores from the sale of alcoholic beverages in the State of Alabama.

"We have been advised by the chief accountant of the Alabama Alcoholic Beverage Control Board that it was necessary to furnish that office an affidavit by the Judge of Probate setting forth the fact of incorporation, date and recording data, together with an affidavit of the enumeration of inhabitants as provided by Section 13, Title 37 of the Code of Alabama 1940, together with a certified copy of the first meeting of the Town Council. That information has been furnished, and we have been advised that our town has been placed on the list of beneficiaries under the distribution of the ABC profits. This affidavit and other information requested was furnished during the early part of the year 1950.

"We were advised by the Administrator of the Alabama Alcoholic Beverage Control Board by letter dated October 28, 1949 that the filing of the Probate's decree of incorporation with the Secretary of State of Alabama for record was not sufficient notice to the ABC Board for distribution to be made to the Town of Chatom of any part of the profits of that Board during the year of 1949.

"We take the position and the Town of Chatom contends that this municipality was and is now entitled to participate in the 1949 ABC profits after the date of the incorporation of this town, and that the filing of copy of said decree of incorporation was sufficient notice to all Departments of the State Government including the ABC Board.

"We base our contention, and cite you as authority, opinion of the Attorney General rendered on August 14, 1950 with reference to municipalities participating in the excise tax on financial institutions, and which opinion held that the filing of the certificate of incorporation in the Office of the Secretary of State, in Montgomery, Alabama, and which was recorded by the Secretary of State, was sufficient notice that the Town of Chatom had become incorporated during the month of February, 1949 and, therefore, it was entitled to participate in the distribution of the excise tax, when said distribution was made by the Department of Revenue on September 1, 1949. We take the position that the filing of this certificate was notice to the ABC Board and to all Departments of the State Government, and based on the authority of the above cited opinion of the Attorney General of Alabama, that the Town of Chatom is entitled to participate in the distribution in 1949 of the profits from the ABC Board from the date of the incorporation of the said Town in February of 1949.

"Please render me your opinion on the question as to whether or not the Town of Chatom was and is now entitled to participate in the distribution of the Alcoholic Beverage Control stores' profits during the year 1949 after the filing and recording of the said decree of incorporation in the Office of the Secretary of State, of the State of Alabama."

Under the provisions of Section 2 of Act No. 255, General Acts 1943, page 226, the several incorporated cities and towns in the State are entitled to a certain percentage of the net profits derived from the proceeds of the Alabama Liquor Stores, after the deduction of costs and expenses. The formula for distribution of such profits is set out in said Section 2. (As there is

no liquor store in the town of Chatom, it is not necessary to consider the distribution of such profits under the provisions of Section 1 of Act No. 255, supra.)

Section 2 of Act. No. 255, supra, is in part as follows:

"Section 2. If the net profits derived from the proceeds of said Alabama Liquor Stores in any such calendar year, including all tax levied upon the selling price of all spirituous or vinous liquors, less all cost and expense of collecting said tax, shall exceed the sum of two million dollars such excess, up to and including two hundred thousand dollars, shall be appropriated among, and paid to, the several incorporated cities and towns in the State on the basis of the ratio of the population of such city or town to the total population of all such cities and towns, and any remainder of such excess over said two hundred thousand dollars shall be apportioned and paid out as next hereinafter provided Populations shall be ascertained for the purposes of distribution under this Act according to the last decennial Federal Census next preceding commencement of calendar year for which distribution is to be made. . . ."

In an opinion of this office to the Chairman of the Alabama Alcoholic Beverage Control Board, under date of March 14, 1947, Quarterly Report of Attorney General, Vol. 46, page 146, it was held that municipal corporations incorporated subsequent to the last decennial federal census are entitled to participate in the distribution of the profits derived from the Alabama Liquor Stores, as provided in Section 2, supra. In this opinion it was said:

"The basis of distribution to those incorporated municipalities which came into being after the last federal census should, therefore, be the actual population of such municipalities. The actual population of these municipalities may be determined by contacting the Judge of Probate of the county in which such municipalities are located.

From the facts set out in your inquiry, the city of Chatom has furnished to the board the necessary information to enable the board to determine the share of profits to which the Town of Chatom is entitled.

After a consideration of Act No. 255, supra, as well as other statutes dealing with the Alabama Alcoholic Beverage Control Board, it is my conclusion that the Town of Chatom is entitled to share in the profits of the Alabama Liquor Stores since the date of its incorporation. There is nothing in Act No. 255, supra, that could be interpreted as meaning that in order for a municipality to share in the profits of the Alabama Liquor Stores, the municipality must have been incorporated at the beginning of the calendar year. The term "in any such calendar year" merely fixes the period of time for computing the profits of the Alabama Liquor Stores for the purpose of distribution of such profits.

Cf. Opinion rendered to you under date of August 14, 1950.

In view of the above conclusions, it is, therefore, my opinion that your inquiry should be answered in the affirmative.

Very truly yours,

A. A. CARMICHAEL *
Attorney General

January 8, 1951

Hon. Roy E. Blair
Commissioner of Revenue
State Department of Revenue
C A P I T O L

Marion County Sales Tax — Use Tax — Expenses

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion bearing date of December 15, 1950, is as follows:

"Under Act #115 of the 1949 Acts of the Alabama Legislature it is the duty of our department to collect a special one percent Marion County sales tax. Some time after the enactment of this law a constitutional amendment was submitted and adopted by the people, the effect of which was to validate Act. #115 if there was anything wrong with it. Afterwards certain men filed a suit in Marion County against Phillip J. Hamm, as Commissioner of Revenue, and members of the Marion County Board of Revenue seeking a declaratory judgment and a decree enjoining said collection of this special county sales tax. The Board of Revenue employed Fite and Fite, Attorneys at Law, Hamilton, Alabama, and Arthur Fite, Jasper, Alabama, to defend this case. An attorney in our Department was associated with these gentlemen. The burden of the defense of this case was on the lawyers employed by the Marion County Board of Revenue who actually did the work in the Circuit Court and on appeal to the Supreme Court of Alabama. This work on their part was successful, that is the case terminated in a victory for the county and the Commissioner of Revenue. In other words, the tax was held to be valid.

"The Marion County Board of Revenue is desirous of paying its attorneys out of this tax and in their judgment, that is the logical fund from which attorneys fees should be paid. Accordingly, they have passed a resolution authorizing the Department of Revenue to fix a reasonable fee and pay said attorneys for their services in this matter out of the proceeds of the said special Marion County sales tax. A certified copy of such resolution is attached herewith to this request for an opinion. I stand ready to cooperate with the wishes of the Marion County Board of Revenue, but before doing so I would like to have your opinion on the following Question:

"Can I legally fix said attorneys fee and pay the same out of the proceeds of said special Marion County sales tax fund?"

The question you pose is different from the one upon which an opinion was given to the Chairman of Marion County Board of Revenue on June 19, 1950. The opinion given him by this office was that the county itself might not use the revenue derived from the sales tax in paying attorneys fees. The question you ask is, in effect, whether you, as Commissioner of Revenue, can pay such attorneys fees as a part of the expense necessary to provide for the administration and enforcement of the Act.

Act #115 of the 1940 Acts levies what is generally known as a sales tax for Marion County for the purpose mentioned therein. It places on the State

Department of Revenue the duty of collecting the tax and makes applicable in that connection all the provisions of "Section 752 through section 811 and Articles 10 and 11 of Chapter 20 of title 51 of the Code of Alabama and amendments thereto." The Department of Revenue is required "to prepare and distribute such reports, forms and other information as may be necessary for the collection of the additional taxes levied herein, and shall have all the authority and duties in connection with such additional taxes as are now given by law to the said Department of Revenue for the collection of state sales and use taxes under Section 752 through Section 811 and Articles 10 and 11 of Chapter 20 of Title 51 of the Code of Alabama and amendments thereto."

Act #115 required the Commissioner of Revenue of the state to pay into the state treasury the money collected under the act and the treasurer is required to pay to Marion County the money certified to him as having been collected for the county. However, it should be noted that Act #115 expressly makes Sections 783 and 784 of Title 51 a part of the Act. Section 783 says that all collections shall be deposited in the state treasury, but Section 784 says "any and all expenses, including salaries, necessary to provide for the administration and enforcement of this article shall be paid out of the proceeds of the collection therefrom before any distribution or disbursement." Therefore, there has to be read into Act #115 a provision that there shall first be deducted all expenses necessary to provide for the administration and enforcement of the Act. If the act had been declared invalid there could have been neither administration nor enforcement of it.

The words "necessary to provide" do not seem to be meaningless. After the passage of Act #115 and the adoption of the constitutional amendment validating it an effort was made by a bill in equity to have the law declared invalid and to enjoin the Commissioner of Revenue and the members of the Marion County Board of Revenue from administering the Act. If that suit in equity had not been successfully defended there would have been nothing to administer and it was "necessary to provide" for the defense of that suit. It could be defended only by attorneys and the work in defending it, as I understand your letter, was done by Messrs. Fite and Fite of Hamilton and Arthur Fite of Jasper. It seems, therefore, that while Marion County Board of Revenue could not pay attorneys fees out of the funds delivered to it by the state treasurer the Commissioner of Revenue can fix the attorneys fees and pay them as a part of "any and all expenses necessary to provide" for the administration and enforcement of the Act. The amount fixed by the Commissioner of Revenue as compensation for the attorneys should be deducted before the money is paid into the state treasury. The money that is then paid by the state treasury to Marion County can be expended only for the purposes directed by the Act.

Very truly yours,

A. A. CARMICHAEL
Attorney General

January 8, 1951

Hon. J. E. Fleming
Chairman, Board of Registrars
Jefferson County
102 Court House
Birmingham, Alabama

Poll Tax — Veterans — Exemptions.

1. The participation of the United States in the Korean conflict constitutes a time "when the United States . . . is . . . at war with any foreign state" within the meaning of such term as used in the Constitution of Alabama 1901, Section 194½, as amended by an amendment proposed by Act No. 244, General Acts 1943, page 199, and proclaimed ratified November 17, 1944.

2. A person who has honorably served in the military service of the United States, or who is honorably serving or shall honorably serve in the military service of the United States during such conflict is entitled to the exemption from poll tax granted by Section 194½, as amended, supra.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion bearing date of December 1, 1950, is as follows:

"In re Amendment XLIX Sec. 194½ Constitution of Alabama. Poll Tax Exemption Amendment Ratified November 17, 1944.

"Since our fighting forces are engaged in War in Korea, we would like for you to give us an opinion relative to the exemption of poll tax that these boys are entitled to.

"Although Congress has not actually declared War against Korea, would the situation which exists now be sufficient to warrant poll tax exemption for those engaged in this conflict?

"The poll tax and registration books are now open and we would appreciate an early opinion as so many of the boys are coming in our office during furloughs to register and qualify as voters."

Constitution of Alabama 1901, Section 194½, as amended by an amendment proposed by Act No. 244, General Acts 1943, page 199, and proclaimed ratified November 17, 1944, reads as follows:

"No person who honorably served in the military service of the United States between January 1, 1917 and November 11, 1918, or between September 16, 1940 and December 8, 1941, or at any time, past or present or future, when the United States was, is or shall be at war with any foreign state, shall be required after the beginning of such service to pay the poll tax specified in the Constitution of Alabama as a prerequisite to the privilege of voting in Alabama; but, on the contrary, every such person

shall be exempt from the payment of all poll taxes which have theretofore accrued and have not been paid or which may thereafter accrue; Provided, however, that if any such person is discharged dishonorably from said service the exemption herein provided is forfeited, and such dishonorably discharged person, as a prerequisite to the privilege of voting in Alabama thereafter, must pay the poll tax specified in the Constitution of Alabama as if such person had never been in such service . . ."

In this connection, your attention is called to an opinion of this office rendered to Hon. John E. Mandeville, Clerk, Circuit Court, Mobile County, under date of December 29, 1950 (Ms.), copy of which is herewith enclosed, in which it was held that the participation of the United States in the Korean conflict constitutes "an existing state of war" within the meaning of such term as used in Act No. 2, General Acts, Extraordinary Session, 1942, page 9, permitting county officials to be in the military service of the United States at a time when there is "an existing state of war" between the United States and any other country without vacating their offices.

In arriving at the conclusions reached in the above opinion, it was necessary to interpret the term "an existing state of war" as used in Act No. 2, supra. In Section 194½, as amended, supra, the term "at war with any foreign state" rather than the term "an existing state of war" is used to define the time during which a person must have honorably served in the military service of the United States in order to be entitled to the exemption from poll tax granted by said Section 194½. It is my conclusion that these two terms are of such similar import that the reasoning used and the conclusions reached in the above opinion are equally applicable to the question now under consideration.

It is therefore my conclusion:

1. That the participation of the United States in the Korean conflict constitutes a time "when the United States . . . is . . . at war with any foreign state" within the meaning of such term as used in Section 194½, as amended, supra.

2. That a person who has honorably served in the military service of the United States, or who is honorably serving or shall honorably serve in the military service of the United States during such conflict is entitled to the exemption from poll tax granted by Section 194½, as amended, supra.

The conclusions reached in this opinion are not in conflict with an opinion rendered to Hon. Coma Garrett, Jr., Judge of Probate, Clarke County, under date of April 5, 1948, Quarterly Report of Attorney General, Vol. 51, page 14, in which it was held that a person who has served in the military service of the United States since September 2, 1945 (the date on which Japan officially and formally surrendered to the Allied powers), is not exempt under Section 194½, as amended, supra, by reason of such service from the payment of poll tax. At the time that opinion was written, the United States was not "under the auspices and the banner of the United Nations" engaged in open hostilities with any foreign country as is the situation today. If the conditions that exist today had existed when I wrote that opinion, the conclusions reached therein would undoubtedly have been different.

Very truly yours,

A. A. CARMICHAEL
Attorney General

January 22, 1951

Hon. J. M. Edwards
Commissioner of Revenue
Department of Revenue
Capitol

Taxation — Exemptions — Corporations.

Tangible personal property purchased outside the State of Alabama by an Alabama resident corporation and stored, used, or consumed by said corporation in the furtherance of its corporate activities in Alabama is not exempt from the Alabama use tax by virtue of the provisions of Title 51, Section 789 (c) Code of Alabama 1940, as amended by Act No. 210, General and Local Acts 1949, page 300.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

A request for an official opinion from your predecessor, bearing date of November 14, 1950, is as follows:

"It is respectfully requested that you give to me as soon as reasonably possible your opinion on the following question:

"Does a non-profit church school, incorporated under the laws of the State of Alabama and located within the State of Alabama, purchasing expendable supplies out of the State, with funds supplied by parents of non-resident minors, as agent for said parents, who are students at said school, for their use while temporarily within this State, come within the provisions of Title 51, Section 789 (c), Code of Alabama, 1940, as amended, to-wit:

"“The storage, use or consumption in this State of the following tangible personal property is hereby specifically exempted from the tax imposed by this article: . . . (c) Tangible personal property, not to be used in the performance of a contract, brought into this State by a non-resident thereof for his own storage, use or consumption while temporarily within this State.””

From additional information secured in connection with this inquiry, it appears that the school is a non-profit eleemosynary corporation organized and existing under the laws of the State of Alabama and located in Madison County, Alabama. The corporation, Oakwood College, is a church organization and its operation is financed by funds supplied by the parents of the minor children who attend this institution.

It is my opinion that the purchases of tangible personal property in question are not exempt from the Alabama use tax.

It is well established that exemptions from taxation are to be strictly construed. 51 Am. Jur., Sections 512, 524; **Brown v. Protective Life Insurance Co.**, 188 Ala. 166, 66 So. 47; **Bowman v. State Tax Commission**, 235 Ala. 190 178 So. 216; **Curry v. Reeves**, 240 Ala. 14, 195 So. 428. Purchase of tangible personal property by strictly benevolent, educational, or religious corporations

are not exempt by the Alabama statutes from either the Alabama sales tax or use tax.

Title 51, Section 789 (c), Code of Alabama 1940, as amended by Act No. 210, General and Local Acts 1949, page 300, exempts from the use tax tangible personal property, not to be used in the performance of a contract, which is brought into this State by a non-resident for his own storage, use or consumption while temporarily within this State. The property in question is purchased by an Alabama resident corporation and stored, used, or consumed by it in the furtherance of its educational program. It is this storage, use, or consumption by the resident corporation which is the taxable event and not the storage, use, or consumption of the expendable supplies by the non-resident students. The source of the money with which this tangible personal property is purchased does not, in my opinion, have any bearing on the question involved, and the theory that the school is acting as agent for the non-resident parents in bringing expendable supplies into this State for the students' use is not, in my opinion, well founded.

In my judgment, the tangible personal property in question is not brought into this State by a non-resident for his own storage, use, or consumption, and, therefore, the exemption provision of Section 789 (c), as amended, *supra*, does not apply.

Yours very truly,

SI GARRETT
Attorney General

January 25, 1951

Hon. H. R. Leeman
Superintendent of Education
Morgan County
Decatur, Alabama

Morgan County — Judge of Probate — Fees — Licenses — Game and Fish — Schools.

The fees collected by the Judge of Probate of Morgan County for issuing hunting and fishing licenses under Title 8, Section 43, Code of Alabama 1940, as last amended by Act. No. 450, General Acts 1945, page 687, are properly included in the monies payable to the custodian of the funds of the public school systems of Morgan County by the Chairman of the Board of Revenue and Control of said county out of the monies received by said Chairman from the Judge of Probate under Act No. 398, General and Local Acts 1949, page 569.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of January 16, 1951, is as follows:

"I am requesting this opinion as County Superintendent of Education of Morgan County, Alabama.

"Under the Act of the Legislature approved August 16, 1949, and found in Acts of Legislature 1949, at page 569, provision is made for paying to the Chairman of the Board of Revenue and Control of Morgan County, Alabama, to be by him delivered to the Custodian of school funds, the net proceeds of what is saved by paying the Probate Judge of the County a salary instead of his being paid with fees as was once done.

"The Act above referred to amends a former Act of the Legislature making provision for placing the Probate Judge of Morgan County on a salary. You will note from the Act that the provision of law is that all of the fees, commissions, compensations, etc., which were formerly paid to the Probate Judge now go into this fund, and is to be used for the schools as provided in the Act.

"Section 43 of Title 8 of the Code of Alabama 1940, as amended in July 1945, providing for the distribution of the money paid for licenses for hunting and fishing contains this provision: 'Provided, however, that all such fees collected by any Probate Judge, Licensed Commissioner, or other official, who is paid a salary for the performance of his duties, shall be paid by him into the County Treasury to the credit of the general fund, and the entire amount collected by the Director shall be covered by him into the game, fish and sea food fund of the Department of Conservation.'

"In paying to the school fund custodian the amount which the Chairman of the Board of Revenue and Control received from the Probate Judge, under the local Acts above referred to, should the amount paid by the Probate Judge into the County Treasury from hunting and fishing licenses be included?

"I call your attention to the fact that the Act of the Legislature placing the Probate Judge on a salary provides that: 'Said Judge of Probate shall collect all monies, fees, compensations, commissions, allowances, costs, percentages, emoluments and other items allowed to and provided for a Judge of Probate by the general laws of Alabama, then and thereafter in force, except as otherwise provided by local Act applicable to Morgan County, and shall pay the same to the Chairman of the Board of Revenue and Control of Morgan County.' The original 1943 and 1945 Legislative Acts and the Act approved August 16, 1949, referred to above further provide for payment of such receipts by the Chairman of the Board of Revenue and Control to the Custodian of the funds of the public school system of Morgan County, Alabama. In no case is an exception made of funds derived from hunting and fishing licenses. It seems then that the legislature intended that fees from hunting and fishing licenses be included with other fees collected by the Probate Judge, in determining the amount to be paid by the Chairman of the Board of Revenue and Control of Morgan County to the Custodian of school funds of Morgan County.

"Please advise as soon as you conveniently can, as the funds are needed by the schools."

In answer to your inquiry, it is my opinion that the fees collected by the Judge of Probate of Morgan County for issuing hunting and fishing licenses under Title 8, Section 43, Code of Alabama 1940, as last amended by Act No. 450, General Acts 1945, page 687, are properly included in the monies payable to the custodian of the funds of the public school systems of Morgan County by the Chairman of the Board of Revenue and Control of said county out of the monies received by said Chairman from the Judge of Probate under Act No. 398, General and Local Acts 1949, page 569.

The Judge of Probate of Morgan County has for some time been on a salary basis by virtue of a constitutional amendment and enabling acts relative thereto.

Section 43, as amended, *supra*, provides that the fees for issuing hunting and fishing licenses allowed to judges of probate, license commissioners, and other officials who are paid on a salary basis, are payable into the general fund of their respective counties. This is a general law.

The net proceeds of the office of the Judge of Probate of Morgan County were coverable into the school funds of said county under Act No. 368, Local Acts 1943, page 208. The detailed procedure as to the distribution of such proceeds was set out in Sections 2 and 5 thereof. These two sections were twice amended, first by Act No. 164, Local Acts 1945, page 81, and, second, by Act No. 398, *supra*. Act No. 398 is a local act, and specifically included fees, commissions, costs, percentages, allowances, and other items collected by the Judge of Probate. It also made provision for the ultimate payment of specially calculated net proceeds to the custodian of the funds of the public school system of Morgan County.

It is clear that the fees allowed to judges of probate for issuing hunting and fishing licenses under Section 43, as amended, *supra*, are within the definition of the word "fee" as used in Act No. 398, *supra*. The question then presents itself as to which of these enactments controls. Do the provisions of the 1949 Local Act (Act No. 398, *supra*) supersede and control over the provisions of the 1945 General Act (Act No. 450, *supra*) in regard to the distribution of the net proceeds in question. In my opinion, this query should be answered in the affirmative.

A special or local law which is repugnant to a former general law relating to the same subject matter, and is not merely affirmative, cumulative or auxiliary, repeals or supersedes the general law by implication to the extent of the repugnancy within the limits to which the special or local law applies, or suspends the operation of the conflicting provisions of the general law in the territory in which the special or local law is operative.—*Pitts v. Culpepper*, 229 Ala. 449, 157 So. 841; *Court of Commissioners of Pike County v. Johnson*, 229 Ala. 417, 157 So. 481.

Yours very truly,

SI GARRETT
Attorney General

January 25, 1951

Hon. Frank A. Reagan
Judge of Probate
Etowah County
Gadsden, Alabama

Licenses — Taxation — Refunds — Judges of Probate.

A licensee collection agency is not entitled to a refund for the unexpired portion of its license, regardless of whether or not the activity engaged in by the agency is deemed legal or illegal.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of January 3, 1951 is as follows:

"I am writing to request an opinion from you as to the legality of a claim for a refund on the privilege license issued by me to Dyer-Sasse Collection Agency under Section 492, Revenue Laws of Alabama, for the period from October, 1950, to October, 1951.

"The Bar Association of Etowah County, Alabama has brought pressure to bear upon the collection agency and is forcing them to discontinue business as of January 1, 1951, on the theory of the law that a collection agency in Alabama is unlawful except in the ordinary course in the practice of law by a licensed attorney.

"Since these accounts that Dyer-Sasse holds at this time were solicited accounts, the Bar Association has, also, ruled that they cannot sell or transfer the accounts to a licensed attorney or they cannot transfer the license that he is applying for a refund on, for that reason. It, also, appears that it would be unlawful for me to sell a collection agency license to anyone. If an attorney runs a collection agency in the due course of his practice, the license that is issued to him is a license as an attorney and not as a collection agency.

"From these conclusions of law, it would seem to me that this matter should be clarified as to the issuance of collection agency licenses, in the first instance as to their legality or illegality, and as to the legality of a refund to them by the State Department of Revenue or this office for the unexpired portion of the license from January 1, 1951, to October 1, 1951.

"Please let me have a ruling on these two questions as soon as possible."

When a license or occupation tax has been imposed upon a business or an activity, the question of whether or not the business or activity is legal is not a matter which addresses itself to the Judge of Probate. For this reason, I do not consider it necessary to answer that portion of your request. The facts of your request indicate that whether or not the agency in question continues in business as a collection agency is a matter which concerns that agency. Either the agency or the Bar Association of Etowah County may test the legality of collection agencies in the courts.

Under no circumstances is the agency entitled to a refund for the unexpired portion of its license. The law in Alabama is well settled on this question. The leading case is *Casmus v. Lee*, 236 Ala. 396, 183 So. 185, 118 A. L. R. 822, 827. This case holds that one who has paid a license or occupation tax, by affixing to a punch board stamps which were required by statute, was liable for the tax since such a tax might be imposed and the statute be valid notwithstanding that the operation of punch boards was made unlawful by an earlier statute. The court reasoned that a license or an occupation tax imposed upon a business or an activity does not necessarily amount to a grant of authority to carry on such a business or activity if it is unlawful. To the same effect is a recent opinion of this office in *Quarterly Report of the Attorney General*, Vol. 56, page 87, holding that a licensee whose license to deal in fireworks had been rendered partially or wholly ineffective by a legislative

act prohibiting the possession, sale, etc., of fireworks in Alabama was entitled to no refund based on the unused portion of his license.

Very truly yours,

SI GARRETT
Attorney General

January 31, 1951

Hon. John Graves
State Comptroller
Department of Finance
Capitol

Constitutional Amendments — Governor's Proclamation — Publication — State — Counties — Municipalities — Title 12, Section 132, Code of Alabama 1940.

1. Cost of publication of Governor's Proclamation, in regard to proposed constitutional amendments affecting the State as a whole and no one county individually, is chargeable to the State.
2. Cost of publication of Governor's Proclamation, in regard to proposed constitutional amendments applicable to one county alone, is chargeable to the individual county concerned.
3. Cost of publication of Governor's Proclamation, pertaining to an amendment affecting any county as a whole is to be borne by the county concerned even though the provisions of such amendment may incidentally affect a municipality of the county; and the municipality is not required by law to pay a portion of such expense.

Opinion by Assistant General Screws.

Dear Sir:

Your request for an official opinion, bearing date of January 18, 1951, is as follows:

"Please furnish me your official opinion in connection with the reimbursement to be made by the counties of expenses incurred by the state in the publishing of the proclamations issued by the Governor in connection with the election held November 7, 1950, upon some six proposed amendments to the Constitution, the issuance of said proclamations being required under the provisions of Section 284, Constitution of Alabama, 1901, as amended.

"Please advise me whether any such amendment is state-wide in scope and effect or whether any amendment is applicable only to a single county or counties of the state."

In construing Title 12, Section 132, Code of Alabama 1940, regarding the payment of publication costs of Governor's Proclamations, submitting pro-

posed amendments to the Constitution, affecting the State as a whole, counties, or subdivisions thereof, this office has held as follows:

1. The cost of publication of Governor's Proclamation, in regard to proposed constitutional amendments affecting the State as a whole and no one county individually, is chargeable to the State.
2. The cost of publication of Governor's Proclamation, in regard to proposed constitutional amendments applicable to one county alone, is chargeable to the individual county concerned.
3. The cost of publication of Governor's Proclamation, pertaining to an amendment affecting any county as a whole is to be borne by the county concerned, even though the provisions of such amendment may incidentally affect a municipality of the county, and the municipality is not required by law to pay a portion of such expense.

Quarterly Report of Attorney General, Vol. 58, page 63; Quarterly Report of Attorney General, Vol. 54, page 128; Quarterly Report of Attorney General, Vol. 53, page 180; Biennial Report of Attorney General, 1934-36, page 583.

Applying the above principles to the various constitutional amendments voted on in the election held November 7, 1950, I have reached the following conclusions in regard to the payment of the cost of publishing the proclamations issued by the Governor concerning said amendments.

Amendment No. 1, relating to the establishment and abolition of branch courthouses in the several counties of the State, proposed by Act No. 260, General and Local Acts 1949, page 380, is state-wide in its scope and affects the State as a whole, and no one county individually. Therefore, the cost of publishing the Governor's Proclamation in regard to this amendment is chargeable only to the State.

Amendment No. 2, authorizing the levying and collection of additional ad valorem taxes for school purposes in Jefferson County, Alabama, proposed by Act No. 459, General and Local Acts 1949, page 665, is applicable to Jefferson County alone. Therefore, the cost of publishing the Governor's Proclamation in regard to this amendment is chargeable only to Jefferson County, Alabama.

Amendment No. 3, relating to the method of filling vacancies in the offices of the judges of the Circuit Court holding at Birmingham, Alabama, proposed by Act No. 562, General and Local Acts 1949, page 881, is applicable to Jefferson County alone. The amendment concerns the offices of the judges of the Circuit Court of Jefferson County holding at Birmingham. The territorial jurisdiction of said circuit court is not co-extensive with the city limits of Birmingham, but includes all of Jefferson County with the exception of the Bessemer Division. The amendment affects Jefferson County and does not affect the City of Birmingham. Therefore, the cost of publishing the Governor's Proclamation in regard to this amendment is chargeable only to Jefferson County, Alabama.

Amendment No. 4, relative to promoting the development of the municipalities of Marion County, Alabama, and securing the location of new industries therein, proposed by Act No. 1, Second Special Session 1950 (Ms.), is applicable to Marion County alone. It concerns the county as a whole, even though the individual municipalities therein are affected. Therefore, the cost of publishing the Governor's Proclamation in regard to this amendment is chargeable only to Marion County, Alabama.

Amendment No. 5, relating to the costs and charges of court, and the fees, commission, percentages, allowances, and salaries of public officers of Talladega County, Alabama, proposed by Act No. 2, Second Special Session 1950 (Ms.), is applicable to Talladega County alone. Therefore, the cost of publishing the Governor's Proclamation in regard to this amendment is chargeable only to Talladega County, Alabama.

Amendment No. 6, authorizing the levying of additional ad valorem taxes for school purposes in Monroe County, Alabama, proposed by Act No. 1, Fourth Special Session 1950 (Ms.), is applicable to Monroe County alone. Therefore, the cost of publishing the Governor's Proclamation in regard to this amendment is chargeable only to Monroe County, Alabama.

Yours very truly,

SI GARRETT
Attorney General

January 31, 1951

Hon. A. L. Spence, Chairman
Board of Revenue
Limestone County
Athens, Alabama

Limestone County — Sheriffs — Counties — Prisons and Prisoners.

1. When the sheriff is on a salary basis, the county must provide necessary help, including a cook and helper for preparing food for prisoners.
2. The salaries of such cook and helper should be paid by the county directly to the cook and helper, and not by the sheriff.
3. When the sheriff is on a salary basis and the county is required to pay for groceries for feeding prisoners, such grocery bill can be paid either by the sheriff, who would then be reimbursed by the county, or directly by the county.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

A request for an official opinion from your predecessor, bearing date of January 4, 1951, is as follows:

"Local Act No. 121 of the 1947 Legislature, Local Acts, 1947, page 79, places the sheriff of Limestone County on a salary basis making a change from the fee basis on which he has been compensated.

"Section 2 of said act provides as follows:

"Section 2. All fees, commissions, percentages, and allowances heretofore collectible for the use of the sheriff and his deputies shall be collected

and paid into the general fund of the county. This shall include the allowances or amounts received by the sheriff for feeding prisoners from both the State and Federal Government, and the county governing body of Limestone County shall pay the actual expenses incurred in feeding such prisoners out of the general fund of the county.'

"Certain questions have arisen about the administration of this section which need to be answered by January 16, the effective date of the act. Your official opinion is requested on these questions.

"1. Does Section 2 of the act authorize the county to pay a cook for cooking food for the prisoners or is the sheriff required to hire a cook out of his salary?

"2. Does Section 2 of the act authorize the county to pay a helper for the cook to carry coal and wood and do odd jobs in and about the preparation and serving of food to prisoners?

"3. Should groceries bought to feed prisoners be charged directly to the county by the sheriff or charged to him with the county reimbursing him monthly?

"4. If a cook and/or helper is allowed should they be carried on the county payroll or paid by the sheriff with the county reimbursing him monthly?"

Act No. 121, Local Acts 1947, page 79, the act referred to in your inquiry, was enacted pursuant to a constitutional amendment, which was proclaimed ratified on September 11, 1947. See Amendment LXIV, Constitution of Alabama 1901. This act was amended by Act No. 163, General and Local Acts 1949, page 190, in respects here not material. This constitutional amendment authorized the Legislature, among other things, to change the method of compensation of the Sheriff of Limestone County. Section 2 of Act No. 121, supra, which places the Sheriff of Limestone County on a salary basis, is quoted in your inquiry and need not be here repeated.

Your questions numbered 1 and 2 may be answered together.

Title 45, Section 146, Code of Alabama 1940, expressly provides that when the sheriff is on a salary basis, the "court of county commissioners or other courts of like jurisdiction of such county shall be required and it shall be their duty to furnish the sheriffs of such county with the help necessary for the preparing and serving such food, and shall pay for the same out of the county treasury of such county. The selection of such help to be made by the sheriff of such county." This section specifically requires your county governing body to furnish you "with the help necessary for the preparing and serving of * * * food," and to "pay for the same out of the county treasury." "Help necessary" certainly includes a cook and helper as described in your letter of inquiry, and it is my opinion that this section requires your county governing body to pay the salaries of said cook and helper out of the county treasury. It is further my opinion, in answer to your questions numbered 1 and 2, that not only does Section 146, supra, require the county to pay for a cook and helper, but that Section 2 of Act No. 121, supra, also requires the county to pay the salaries of such employees, as the salaries of such employees would be "actual expenses incurred in feeding such prisoners."

In answer to your inquiry No. 4, it is my judgment that the cook and helper, so employed, should be carried on the county pay roll, as any other

employee. You will note that Section 146, *supra*, allows the sheriff to select the cook and his helper. However, the obligation to pay such help is upon the county, and the employees should be paid directly by the county, and not by the sheriff.

In answer to your inquiry No. 3, it is my opinion that your county governing body may adopt either of the methods suggested in question No. 3 in paying for groceries. The law does not prescribe in detail the manner in which groceries should be bought by the sheriff.

Under the general law, the sheriff purchases groceries out of his own funds and is reimbursed by the State under the provisions of Title 45, Section 144, Code of Alabama 1940, as amended by Act No. 309, General Acts of 1945, page 502, and Title 45, Section 147, Code of Alabama 1940. Since the Sheriff of Limestone County is on a salary basis and the county receives the allowance for food paid by the State, the obligation is on the county to pay for the food or groceries needed to feed prisoners. It is immaterial as a matter of law whether the sheriff purchases the groceries and then makes a claim to the county governing body for reimbursement, or whether the sheriff charges the groceries to the county and has the bill sent to the county governing body for payment.

In either event, an itemized statement of the grocery bill would reach the county governing body for its approval, and payment should be made either to the grocery store or to the sheriff.

Yours very truly,

SI GARRETT
Attorney General

February 2, 1951

Hon. John Graves
State Comptroller
Department of Finance
Capitol

Governor — Funds — Appropriations — State and State Departments.

Since Title 55, Section 179, Code of Alabama 1940, is an authorization for, rather than a limitation upon, expenditures from the Governor's contingent fund, such fund may be spent for any purpose which, in the Governor's discretion, is a legitimate incidental, extraordinary, or contingent expense of the State government, for which no appropriation is otherwise made.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion bearing date of January 22, 1951, is as follows:

"I request your official opinion relative to Title 55, Section 179 of the 1940 Code, which section refers to expenditures from the Governor's Contingent Fund. The question is as follows:

"Are expenditures from the above mentioned fund limited to the items mentioned in the section or may other official items, that are not listed, be paid from this fund? In other words, is Section 179, Title 55, an authorization or a limitation?"

I am of the opinion that the effect of Title 55, Section 179, Code of Alabama 1940, is to authorize, rather than limit, purposes for which the Governor's contingent fund may be spent, and that, therefore, expenditures from such fund may be made for official items not listed in Section 179, *supra*.

The history of the Governor's contingent fund is older than that of the State itself. While Alabama's first Governor, Dr. William Wyatt Bibb, was Governor of the Alabama Territory, the First General Assembly of the Alabama Territory appropriated "to the order of his Excellency the Governor," the sum of five thousand dollars as a "contingent fund." General Acts 1818, page 77. With but few exceptions, every legislature which convened during the period of 1818 to 1949 included in its General Appropriation Act a substantial annual appropriation for the Governor's contingent fund. The lowest amount ever appropriated was one thousand dollars in 1833, while the highest amount appropriated was fifty thousand dollars during the Civil War years of 1862 to 1865. The appropriation reached twenty thousand dollars in 1923, and since 1931 the amount thereof has stood at twenty-five thousand dollars per annum.

As aforesaid, the first appropriation was made in 1818 "to the order of his Excellency the Governor, as a contingent fund." Subsequent appropriations were made "subject to the order of the Governor" (1819); "subject to the order of the Governor of this State" (1820-1822); "subject to the Governor's draft" (1824-1830); "to defray the contingent expenses of the State government" (1836-1842, 1844-1852); "to be applied under the direction of the Governor" (1843); "to be paid only on the draft of the Governor" (1854); "to meet extraordinary expenses and contingencies, to be drawn on the warrant of the Governor" (1861-1864); "to be drawn on the order of the Governor" (1866); "for incidental and contingent expenses, to be paid on the order of the Governor in conformity to the law, as the public service may require" (1868; 1870-1873); "for the purpose of defraying the incidental and contingent expenses of the Government" (1869); "for incidental and contingent expenses" (1875-1882); "to be disbursed upon the order of the Governor for purposes for which no appropriation is otherwise made" (1884); "to be disbursed upon the order of the Governor" (1886-1907); and "for the Governor's contingent fund" (1919-1949).

Thus, it will be noted that from 1818 to 1939 the only limitation placed upon the expenditure of the fund was that it be spent, in conformity with law, upon the Governors order, for incidental, extraordinary, and contingent expenses of the State government and as the public service might require, for purposes for which no appropriation was otherwise made.

Section 179, *supra*, is a codification of Act No. 23, General Acts 1939, page 31, approved February 10, 1939. The purpose of that Act, as expressed in its title is, to **authorize** the Governor to make expenditures from the fund for the repair and upkeep of the Governor's mansion, for lights, heat, water, service and servants, for public or official entertainment incident to his office, and for such transportation as may be necessary for the Governor's use. In my judgement, no word in the act indicates a legislative purpose to limit expenditures from the fund to the items specifically mentioned in the act. On the contrary, the fund was in existence long prior to 1939 and the legislature had never sought to limit the purposes for which the fund might be spent, except to indicate that it could be spent only for incidental, extraordinary, and contingent expenses of the State government, for which no appropriation was otherwise made. Had the 1939 Legislature intended that the fund's expenditure be limited expressly to the purposes authorized

by Act No. 23, *supra*, (Section 179, *supra*), it would have been a simple matter for the legislature so to declare, but it did not do so. Instead of limiting the fund's expenditure, in my opinion Act No. 23, *supra*, merely defined additional legitimate State purposes for which the fund might be spent.

While the conclusion above reached needs no further support, and would stand independent of, and unaided by, the rule of administrative construction, it conforms to the construction which I am advised has been heretofore placed upon Section 179, *supra*, by the administrative officers of this State. Construing the statute as an authorization instead of a limitation, they consistently have approved for payment vouchers drawn on the fund for a wide variety of purposes other than those expressly authorized by Section 179, *supra*. A fundamental rule of statutory construction is that, when there is doubt about the proper construction of a statute, a contemporaneous construction placed thereon by officers whose duty it was to construe it and of the executive department, and the popular interpretation as exemplified in practice for a number of years, should be looked to in reaching a conclusion as to the proper construction. **Jones v. Johnson**, 240 Ala. 357, 199 So. 539; **Dixie Coaches v. Ramsden**, 238 Ala. 285, 190 So. 92; **First National Bank v. Basham**, 238 Ala. 500, 191 So. 873, 125 A. L. R. 656; **State ex rel. Fowler v. Stone**, 237 Ala. 78, 185 So. 404.

Having concluded that Section 179, *supra*, constitutes an authorization instead of a limitation, I am of the further opinion that the only limitation upon the purpose for which the fund may be used is that it can be expended only for the incidental, extraordinary, and contingent expenses of the State government, for which no appropriation is otherwise made.

Its expenditure is under the Governor's direction, and is subject to his personal supervision and control. In determining what are legitimate expenditures from the fund, he exercises a discretionary power which, in the absence of fraud, corruption, or unfair conduct of the State's business, cannot be restrained or reviewed by the courts. See **McFarland v. McKee**, 252 Ala. 434, 41 So. 2d. 574; **Ensley Motor Car Co. v O'Rear, Treasurer**, 196 Ala. 481, 71 So. 704; **Board of Revenue of Covington County v. Merrill**, 193 Ala. 521, 69 So. 971; **Eutaw v. Coleman**, 189 Ala. 164, 66 So. 464; **Henry, County Treasurer v. Rogers, County Engineer**, 19 Ala. App. 376, 97 So. 427.

Yours very truly,

SI GARRETT
Attorney General

February 5, 1951

Hon. John D. McQueen
Vice-President
Board of Trustees
Alabama State Hospital and
Chairman, Board of Managers
Partlow State School
First National Bank Building
Tuscaloosa, Alabama

Appropriations — Alabama Insane Hospitals — Funds — Governor.

The amount of an appropriation of "one dollar (\$1.00) per week for each patient" appropriated to the Alabama Insane Hospitals and the Partlow State School for Mental Deficients by Act No. 28, Fifth Special Session, 1950, approved October 25, 1950, is to be determined by the number of weeks in the entire fiscal year, rather than by the number of weeks remaining in the fiscal year after the approval of said Act by the Governor.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion bearing date of November 1, 1950, is as follows:

"On October 25th, 1950, the Governor approved an Act passed by the Legislature of Alabama which is in words and figures as follows:

**"A B I L L
T O B E E N T I T L E D
A N A C T**

"To make an additional appropriation to the Board of Trustees of the Alabama Insane Hospitals for the use of the Alabama Insane Hospitals and the Partlow State School for Mental Deficients for the fiscal year ending September 30, 1951.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. In addition to all appropriations heretofore made for the support, maintenance and repair of the Alabama Insane Hospitals and the Partlow State School for Mental Deficients the sum of one dollar (\$1.00) per week for each patient is hereby appropriated to the Board of Trustees of the Alabama Insane Hospitals for the use of the Alabama Insane Hospitals and the Partlow State School for Mental Deficients for the fiscal year ending September 30, 1951.

"Section 2. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law."

"You will note that while Section 2 of the above quoted Act provides that the same shall become effective immediately upon its passage and ap-

proval by the Governor, Section 1 thereof in terms makes the appropriation, 'for the fiscal year ending September 30, 1951.' Of course, that fiscal year commenced on October 1, 1950. It seems clear that the Legislature not only **intended** that the Institutions, for the benefit of whose patients the Act was passed, should receive the additional appropriation for the whole of said fiscal year rather than for only a part thereof, but **in terms** made the appropriation for the **entire** year.

On October 26th, 1950 I wrote the Hon. James V. Jordan, Budget Officer, Department of Finance, advising him that under my construction of the Act these Institutions are entitled to the additional \$1.00 per patient capita per week for the entire fiscal year beginning October 1, 1950.

"In reply to said letter Mr. Jordan writes me that while he is personally in sympathy with my said construction of the Act, in his opinion the said additional appropriation can only be paid for the period beginning on the date of the approval of the Act by the Governor. In this letter Mr. Jordan, of course, also states that he will be bound by any official ruling of your office as to the construction of the Act in question.

"Your opinion is, therefore, requested as to the following:

"Under the above quoted Act are the Alabama State Hospitals and the Partlow State School entitled to receive the additional sum of \$1.00 per patient capita per week beginning October 1, 1950, or does this per capita appropriation only become effective and payable as of October 25, 1950, the date on which the Act was approved by the Governor?

"Your prompt attention will be very much appreciated."

I am of the opinion that the Alabama State Hospitals and the Partlow State School are entitled to receive the additional sum of one dollar (\$1.00) per patient per week beginning October 1, 1950.

The act to which you refer is Act No. 28, Fifth Special Session, 1950, approved October 25, 1950. The act specifically states that the appropriation is made "for the fiscal year ending September 30, 1951." The fiscal year of the State government commences on October 1st and ends on September 30th, which fiscal year must be used for the purposes of making appropriations. Title 1, Section 13, Code of Alabama 1940.

While the act provides that it shall become effective upon passage and approval by the Governor, which approval was given on October 25, 1950, I am of the opinion that the clear legislative intent was that the appropriation should have a retroactive effect and that the amount thereof, once the appropriation became effective, should be determined by the number of weeks in the full fiscal year, rather than by the number of weeks remaining in that fiscal year after the Governor's approval on October 25, 1950.

As a general rule statutes are to be considered prospective, unless the language is such as to show that they were intended to be retrospective. **City of Mobile v. Merchants National Bank of Mobile**, 251 Ala. 254, 37 So. 2d. 104; **McGregor v. McGregor**, 249 Ala. 75, 29 So. 2d. 561. But the strict grammatical sense of language used by the Legislature may give way to a construction required by other rules of interpretation, so that words apparently importing retroactive effect will, in the absence of other reasons supporting a literal construction, be so construed as to produce a retrospective operation. **Lovejoy v. Beeson**, 121 Ala. 605, 25 So. 599.

Any other construction would to some extent at least, invest the Governor with power to determine the amount thereof, since he is allowed six calendar days, Sunday excepted, within which to veto a bill. Constitution of Alabama 1901, Section 125. It is fundamental that all appropriation powers are vested exclusively in the legislative branch of the State government. Constitution of Alabama 1901, Section 72; **Abramson v. Hard**, 229 Ala. 2, 155 So. 590.

Yours very truly,

SI GARRETT
Attorney General

February 7, 1951

Hon. Henry W. Smith, President,
Etowah County Board of Revenue,
Gadsden, Alabama.

Etowah County — Sheriffs — Salaries

Under the provisions of Section 3 of Act No. 318, Local Acts 1947, page 232, the Board of Revenue of Etowah County has the authority and power to fix the salary of each deputy, clerk, and assistant to the sheriff of said county.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of January 26, 1951, is as follows:

"As President of the Etowah County Board of Revenue and under authority of Title 55, Section 240 of the 1940 Code of Alabama and Amendments thereto, I respectfully request an opinion of you on the following question:

"Does the Etowah County Board of Revenue have the authority and power to fix the individual salary of each deputy, clerk, assistant, and other employees of the Sheriff of Etowah County under Act Number 318 of the 1947 Local Acts of Alabama, found on page 232 thereof.

Under the provisions of Section 3 of Act No. 318, Local Acts 1947, page 232 (the Act referred to in your letter of inquiry), the Board of Revenue of Etowah County "is required, authorized and empowered to provide sufficient deputies, clerks, jailers, and other assistants, to the said sheriff to enable him to properly perform the duties of his office." This section also specifically authorizes and empowers said board "to fix the compensation to be paid such deputies, clerks and assistants," and provides the manner and from what fund such salaries or compensation must be paid.

In view of the express provisions of Section 3, supra, it is my opinion that the Board of Revenue of Etowah County has the authority and power to fix the salary of each deputy, clerk, and assistant to the sheriff of Etowah County.

Yours very truly,

SI GARRETT
Attorney General

February 9, 1951

Hon. W. M. English
 Personnel Director
 Personnel Department
 Montgomery County
 Montgomery, Alabama

Merit System — Montgomery County — Officers — Employees.

1. Section 4(h) of Act No. 528, General and Local Acts 1949, page 819, specifically exempting two clerks to be designated by each county elective official from the operation thereof is mandatory.

2. Judge of the Juvenile and Court of Domestic Relations of Montgomery County, elected by the Senate under the provisions of Act No. 53, Local Acts 1939, page 19, is not a "county elective official" within the meaning of that term as used in Section 4(h) of Act No. 528, supra.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, addressed to my predecessor, is as follows:

"I should like to refer you to Section IV, Subsection h, of Act Number 528 of the regular session of 1949 and submit these questions:

"1. Does that part of Subsection h, 'and two clerks to be designated by each county elective official,' mean that it is mandatory that two employees in each such office shall be exempt from the provisions of the Act?

"May I also refer to Section 6, Act Number 53 of the local Acts of the regular session of 1939, Page Number 19, which provides 'that there shall be elected by the Senate' Judge of the Juvenile Court.

"2. Does election by the State Senate make this judge an 'elective county official' in accordance with the meaning of the term 'County elective official' as used in the cited section of Act Number 528?"

I am of the opinion that your first inquiry should be answered in the affirmative.

Act No. 528, General and Local Acts 1949, page 819, a general law with local application, creating and establishing a county-wide personnel department in Montgomery County and in the City of Montgomery, supersedes all former provisions of law with reference to the employment and compensation of county and city officers and employees included therein and not exempted therefrom. Section 4(h) of this act **specifically exempts** two clerks to be designated by each county elective official from the operation thereof. Consequently, two of the employees clerks in the office of each county elective official are exempted and their compensation is still governed by other prevailing statutes.—Opinion of Attorney General to Hon. J. P. Shaffer, Clerk, Montgomery County Board of Revenue on November 15, 1950 (Ms.); Quarterly

Report of Attorney General, Vol. 60, page 5. The Personnel Department, created by this act, has no jurisdiction over those employees specifically exempted from its operation.

In my opinion your second inquiry should be answered in the negative.

Act No. 53, Local Acts 1939, page 19, created and established in Montgomery County, Alabama, "a juvenile and court of domestic relations." Section 6 thereof provides that the judge of said court shall be elected by the Senate. This theoretical election by the Senate (which is in practical effect an appointment by the State Senator from Montgomery County) does not, in my judgment, place the judge of said court in the category of a "country elective official" within the meaning of that term as used in Section 4(h) of Act No. 528, supra. In my opinion, the Legislature, in using that term, intended to describe only those officials elected by a direct vote of the qualified electors of the county.

Yours very truly,

SI GARRETT
Attorney General

February 9, 1951

Hon. Leonard Hardy
Acting Director
Department of State Docks and Terminals
Mobile 4, Alabama

Docks Commission — Labor — Contracts Salaries.

Under Title 38, Section 17, Code of Alabama 1940, the Director of State Docks and Terminals has the authority to grant pay in lieu of vacation to the employees of the terminal railroads.

Opinion by Assistant Attorney General Parker.

Dear Sir:

A request for an official opinion from your predecessor, dated June 16, 1950, is as follows:

"Pursuant to the provisions of Section 17, Title 38, Code of Alabama of 1940, the Department of State Docks and Terminals has entered into Vacation Agreements with respect to the employees of the Terminal Railway, which agreements are generally consistent with the provisions of interstate railroads operating in the same territory with the Terminal Railway. However, the vacation agreements of other interstate railroads operating in this territory provide for pay in lieu of vacations, but this provision has not been inserted into the Vacation Agreements of the Employees of the Terminal Railway. Request has been made for the insertion of such a provision for pay in lieu of vacation, and the propriety of such has been raised. Your official opinion is accordingly requested on the following questions:

"1. Does the Director of the Department of State Docks and Terminals have authority to make an agreement to pay to the Employees of the Terminal Railway pay in lieu of vacations, and to make payment of such pay in lieu of vacations in addition to regular pay to such employees of the Terminal Railway who work instead of taking time off for vacations?"

You will note that under the provisions of Title 38, Section 17, Code of Alabama 1940, the State, acting through the Department of State Docks and Terminals, "shall have the right and authority to make agreements as to scale of wages" of certain employees of the terminal railroads "to the end that the same agreements as to seniority and working conditions will obtain as to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby."

Having entered into an agreement authorized by Section 17, *supra*, it became the duty of the Department of State Docks and Terminals to insure that such agreement is in conformity with like agreements applicable to like employees of the interstate railroads operating in the same territory. Section 17, *supra*; Quarterly Report of Attorney General, Vol. 53, page 127; Opinion to Hon. E. S. Morgan, Director of State Docks and Terminals, under date of December 21, 1950 (Ms.).

It is my opinion, under the above statutes, that the Director of State Docks and Terminals has authority to grant pay in lieu of vacations. Such provision is a proper subject for bargaining between labor and management. *Singer Manufacturing Co.* (1940), 24 N. L. R. B. 444.

In *Brampton Woolen Co. v. Local Union 112*, 61 Atl. 2d 796 (N. H.), the Court said:

"There can be little doubt that workers generally consider the money which comes to them as a result of their labors, whether it be regular pay, overtime or vacation pay as a part of their wages and courts have recognized this fact. In *re Wil-Low Cafeterias, Inc.*, 111 Fed. (2d) 429; In *re Public Ledger, Inc.*, 191 Fed. (2d) 762."

In *Giannettino, et al. v. McGoldrick, et al.* (1946) 295 N. Y. 208, 66 N. E. 2d 57, the Court said:

"Vacation pay and pension benefits are not gratuities. Pension annuities, after the expiration of the period of active service, are in the nature of compensation for the services previously rendered for which full and adequate compensation was not received at the time of the rendition of such services. They are in effect pay withheld to induce long continued and faithful service. *Matter of Mahon v. Board of Education*, 68 App. Div. 154, 156, *affd.* 171 N. Y. 263; *Hoyt v. County of Broome*, 285 N. Y. 402, 406. See also, *Schieffelin v. Berry*, 127 Misc. 178, 182 *Affd.* 217 App. Div. 451, *Affd.* 243 N. Y. 603."

In CCH Labor Law Reporter, Volume 5, Paragraph 51207, it was pointed out that although the objectives and principles of vacations with pay provisions are predicated on actual time off for rest and relaxation, some agreements permit a vacation bonus to be given to workers in lieu of vacation. In some agreements, this is done at the option of the employee; in order agreements, at the option of the employer; and in still other agreements, by mutual consent. During the war, the substitution of a bonus for vacation became a prevalent practice in many industries because of the need for maximum production.

It is, therefore, my opinion that the Director of State Docks and Terminals has authority to grant pay in lieu of vacation, provided similar vacation agreements are in force relative to like employees of interstate railroads in the same territory.

Yours very truly,

SI GARRETT
Attorney General

February 14, 1951

Hon. H. M. Bashell, Chairman
Board of Education
Marion County
Bear Creek, Alabama

Schools — County Boards of Education — County Superintendents of Education.

When a county board of education, upon the recommendation of the county superintendent of education, has adopted a resolution to borrow money to pay the salaries of teachers and to meet current expenses, as provided in Title 52, Section 243, Code of Alabama 1940, it may rescind such resolution without the recommendation of the county superintendent of education, provided no vested rights have intervened.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of January 19, 1951, is as follows:

"The Marion County Board of Education passed a resolution to borrow some money. At the next meeting the Marion County Board, without the recommendation of the County Superintendent, rescinded the same resolution.

"My question is: Was it legal for the board of education to rescind the motion without the recommendation of the Superintendent?"

My answer to your inquiry is in the affirmative.

In this regard, your attention is directed to Title 52, Section 243, Code of Alabama 1940, which reads, in pertinent part, as follows:

"§ 243. Funds may be borrowed against revenues of current year.—Any county or city board of education shall have authority during any fiscal year upon the recommendation of the county or city superintendent of education, as the case may be, to borrow money in anticipation of the current revenues for that fiscal year and to pledge the current revenues for said fiscal year for the payment of such loan or loans if funds on hand are not sufficient to pay the salaries of teachers and to meet the cur-

rent expenses when due, provided, however, that the party or parties making such loan or loans to a board of education shall not be put upon inquiry as to the validity of such indebtedness because of this provision.
* * * * *

It is to be noted that under the above section the county board of education, upon the recommendation of the county superintendent of education, has authority to borrow money to pay the salaries of teachers and to meet current expenses. The county board of education may or may not act upon the recommendation of the superintendent of education in borrowing money for such purposes. It appears from your request that the county board of education in passing its first resolution decided to follow the recommendation of the county superintendent of education; but at some later date, the board thought it advisable not to follow the recommendation of the county superintendent of education in this regard.

You are, therefore, advised that if the county board of education decided not to follow the recommendation of the county superintendent of education to borrow money for such purposes, it may rescind its resolution in this regard without the recommendation of the county superintendent of education, provided no vested rights have intervened. Cf. Quarterly Report of Attorney General, Volume 25, page 27. This is a matter which addresses itself solely to the sound discretion of the county board of education.

Yours very truly,

SI GARRETT
Attorney General

February 14, 1951

Hon. James Wyatt Stuart,
Judge of Probate,
Jackson County,
Scottsboro, Alabama

Counties—Jackson County—Compensation.

Under Act No. 6, Local Acts 1950 (Fifth Special Session), approved November 4, 1950, the members of the Board of Revenue of Jackson County are entitled to receive the same compensation they formerly received as members of the Court of County Commissioners until their successors are elected and qualified as provided in Act No. 65, supra.

Opinion by Assistant Attorney General Parker.

Dear Sir:

Your request for an official opinion, bearing date of November 17, 1950, is as follows:

"I beg to refer you to a local act of the Legislature, known as House Bill 81, sponsored by Representative John O'Neal of Jackson County.

"I desire enlightenment as to the following matters: I beg to refer you to Sections 2, 9 and 10 of this act. The Board is in some doubt as to the meaning of these three sections.

"You will note that in Section 2 it is provided that ' . . . such incumbent members of the Court of County Commissioners and the Probate Judge shall receive the same compensation as they now receive as judges of the Court of County Commissioners.' As you know, the members of the Court of County Commissioners of this County, before the enactment of the local act in question, drew certain compensation in connection with the supervision of the construction and inspection of roads and for those duties generally performed by Courts of County Commissioners throughout Alabama.

"I beg of you now to invite your attention to Section 9, which provides for the creation of a road supervisor and places a good many duties relating to the construction and supervision of the roads on such road supervisor.

"You will note that in Section 10 the duty of inspecting roads is placed upon the chairman of the board. The chairman of the board has heretofore inspected roads but you will notice that Section 10 provides that he **shall** inspect roads.

"The question has arisen whether or not Section 9 and Section 10, together or either one of them, are in conflict with Section 2. In other words, Section 2 provides that the Court of County Commissioners shall receive the same compensation after the passage of the act as they were receiving before the passage of the act. In view of the fact that the act creates the office of road supervisor and places certain duties upon such supervisor as to inspection of roads, do you think there is any conflict between Section 2 and Section 9? Stated a little differently, do you think it was the intention of the Legislature to interfere in any way with the compensation drawn by the members of the board by the passage of the act?

"You will note that Section 2 provides very clearly that the compensation of the Board is not disturbed, in the following words: 'As members and chairman of the board of revenue, such incumbent members of the Court of County Commissioners and the Probate Judge shall receive the same compensation as they now receive as judges of the court of county commissioners.' Despite the fact that Section 9 creates a road supervisor and despite the fact that Section 10 says the chairman of the board shall, from time to time, inspect the roads and bridges of the county, yet you will note that Section 2 is still perfectly clear when it states that the Court of County Commissioners and the Probate Judge shall receive the same compensation as they now receive as members of the court of county commissioners.

"In order that the Court of County Commissioners may know how to proceed in this matter, I will appreciate it if you will advise me whether or not the expenditure of money by the county in paying the incumbent members of the County Commissioner, the same pay they were receiving at the time the act was passed, is proper."

In reviewing the laws pertaining to the governing body of Jackson County, I find that Act No. 356, Local Acts 1943, page 199, which attempted to establish a board of revenue for Jackson County, was declared unconstitutional in an opinion of this office appearing in Quarterly Report of Attorney General,

Volume 32, page 84. I also find that Act No. 335, Local Acts 1945, page 162, which attempted to establish a board of revenue for Jackson County, was declared unconstitutional by the Circuit Court of Jackson County, and from that decision, no appeal was taken. In view of the above opinion and decision, the governing body of Jackson County was operating under the general law at the time of the passage of Act No. 65, Local Acts 1950, (Fifth Special Session) approved November 4, 1950.

A careful review of Act No. 65, *supra*, convinces me that it was the intent of the Legislature, as expressed in Section 2 (which section is set out below), that the compensation of the judge of probate and the former county commissioners, who now comprise the Jackson County Board of Revenue should remain the same as under the general law. By the express provisions of Section 2 of Act No. 65, *supra*, the incumbent members of the board of revenue will continue to receive the same compensation to which they were entitled under the general law as members of the Court of County Commissioners. Section 2, *supra*, is as follows:

"Section 2. Until the first Monday after the second Tuesday in January, 1953, the Jackson County Board of Revenue shall consist of the four incumbent members of the Jackson County Court of County Commissioners and the Probate Judge of Jackson County, who shall serve as chairman of the Board. As members and chairman of the Board of Revenue, such incumbent members of the Court of County Commissioners and the Probate Judge shall receive the same compensation as they now receive as judges of the Court of County Commissioners."

It is clear that Section 3 of Act No. 65, *supra*, concerning the compensation of the members of the board of revenue, is not applicable until the chairman and members of said board, who are elected in the general election in November, 1952, take office on the first Monday after the second Tuesday in January, 1953.

Section 9 of Act No. 65, creating the position of supervisor of roads and bridges for Jackson County, does not relieve the Board of Revenue of its general supervision over such supervisor and the county road system. See Section 10 of Act No. 65, *supra*.

It is my conclusion that the expenditure of money by the county in paying the incumbent members of the Board of Revenue of Jackson County the same compensation they were receiving as members of the Court of County Commissioners under the general law at the time of the passage of Act No. 65, *supra*, is legal.

Yours very truly,

SI GARRETT,
Attorney General.

March 2, 1951

Hon. L. A. Whetstone,
Tax Assessor, Jefferson County,
106 Court House,
Birmingham 3, Alabama.

Colleges and Universities — Taxation — Exemptions.

The first time that an exemption from taxation may be granted under the provisions of Act No. 40, Fifth Special Session, 1950, approved October 31, 1950, is for the taxes due October 1, 1952, and delinquent January 1, 1953.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of January 8, 1951, addressed to my predecessor, reads, in pertinent part, as follows:

"On October 31, 1950, an Act was passed and approved and signed by the Governor of Alabama. Said Act being as follows:

"Relating to the taxation of property owned and used by colleges; To exempt from taxes all property owned and used by colleges for housing students, faculty members or other employees of such colleges, and to exempt property owned by colleges for enlargement of campus or for new campus.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. That all property owned and used by a college for the purpose of housing students, members of the faculty or other employees of the college is exempt from taxation.

"Section 2. That all property owned by a college and held for the bona fide purpose of being used for enlargement of a campus or for the development of a new campus is exempt from taxation."

"Approved October 31, 1950.

"I request an official opinion from your department as to which tax year this Act will affect the exemption from taxation of the Howard College Properties.

"I would appreciate your giving this request priority, inasmuch as the situation warrants it."

The Act which you set out in your inquiry is Act No. 40, Fifth Special Session, 1950, approved October 31, 1950.

The lien for ad valorem taxes is fixed by Title 51, Section 884, Code of Alabama 1940, which is as follows:

"From and after the first day of October of each year, when property becomes assessable the state shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this title, or as other liens upon property are enforced, except as otherwise provided by law."

In the case of **United States v. State of Alabama**, 313 U. S. 274, 85 L. Ed. 1327, it was held that the tax lien of the State attached on October 1, and that such lien is valid as to the entire year's taxes, notwithstanding the fact that the land may have been acquired by the United States on October 1, or any subsequent day in the tax year. In the case of **Johnson, Tax Assessor v. State, ex rel. City of Birmingham**, 245 Ala. 499, 17 So. 2d 662, the court said:

"It is a well-recognized rule in all procedures adopted for the annual assessment of property taxes, that there shall be one fixed date—a law day—with respect to which persons and subjects of taxation shall be determined and values fixed or assessed."

In an opinion of this office rendered to the Tax Collector of Pike County under date of April 1, 1943, Quarterly Report of Attorney General, Vol. 31, page 5, it was held that when property was purchased by a county board of education on February 4, 1942, such property is subject to sale for nonpayment of taxes due on the same for the tax year commencing October 1, 1941, and ending September 30, 1942, the lien of the State for such taxes having affixed against the property on October 1, 1941.

See Quarterly Report of Attorney General, Vol. 49, page 133, Vol. 50, page 86; Vol. 51, page 238.

Act No. 40, supra, became a law on the date of its approval, October 31, 1950. On that date the lien for taxes due October 1, 1951, and delinquent January 1, 1952, had already attached. Therefore, no exemption from taxation may be claimed under said Act for such taxes. On October 1, 1951, the lien for taxes due October 1, 1952, and delinquent January 1, 1953, will attach. On that date, under the provisions of Act. No. 40, supra, the property will be exempt from taxation.

It is therefore my opinion that the first time an exemption from taxation may be granted under Act No. 40, supra, is for the taxes due October 1, 1952, and delinquent January 1, 1953.

Yours very truly,

SI GARRETT,
Attorney General.

March 2, 1951

Hon. R. P. McRee, Administrator,
Alabama Alcoholic Beverage Control Board,
Montgomery 2, Alabama.

Alabama Alcoholic Beverage Control Board.

Loss incurred by the passing of counterfeit money by customers in purchasing merchandise at the various Alabama Alcoholic Beverage Control Board Stores should be charged to operating costs under the facts stated.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion addressed to my predecessor is as follows:

"During the past several months and at several different stores the A. B. C. Board has received counterfeit money paid by customers in the purchase of merchandise. At each of these stores there are two or more cashiers and in some instances relief cashiers which may be the manager or some other employee with the classification of store cashier.

"The fact that the money was counterfeit was discovered by the banks and it was required for refund to be made to the banks.

"Inasmuch as employees of the Board are acting as agents of the Board in the operations of the state stores and in view of the fact that the exact identity of any individual receiving the counterfeit bills cannot be determined we request your opinion as to whether or not the A. B. C. Board should charge off the loss from counterfeit bills as an operating cost.

If you answer to this question is in the negative we request your opinion as to who should be required to absorb the loss."

In answer to your inquiry, it is my opinion that the loss incurred by the passing of counterfeit money by customers in purchasing merchandise at the various Alabama Alcoholic Beverage Control Board stores should be charged to operating costs.

You state in your request for an opinion that it is not possible to determine the exact identity of an individual cashier who accepted the counterfeit money. For this reason, a consideration of the liability of the cashier for receiving counterfeit money is not necessary.

Yours very truly,

SI GARRETT,
Attorney General.

March 5, 1951

Hon. O. Howard Moore
Tax Assessor
Madison County
Huntsville, Alabama

Ad Valorem Taxes — Taxation — Exemptions.

A Wherry Act Housing Project, to be constructed on Huntsville Arsenal property, is not exempt from ad valorem taxation in Alabama, since Congress has waived Federal tax immunity for such property.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of January 31, 1951 is as follows:

"I am enclosing copy of letter addressed to me from Captain Robert C. Brenneman with reference to the application of Ad Valorem Tax against the 120 Housing Units mentioned.

"The immediate problem seems to be in determining whether there will be an Ad Valorem tax chargeable to this property. As I understand the situation these housing units will be constructed on Huntsville Arsenal property with money supplied by Federal Housing Authority. A Contractor has been engaged for the construction of these units and after construction the same Contractor will operate the project. Low rates will be charged to employee's and Military personnel, the money being used first to reimburse Federal Housing Authority. The Contractor who will be known as sponsor might possibly have some personal gain as a result of his sponsorship.

"The entire project is now being held up, so I am informed, because we are unable to say definitely whether there should be a tax chargeable to this property. It is my personal opinion that this property might not be subject to Ad Valorem Tax but I prefer to have the opinion of the Atty. General and also, Capt. Brenneman is very desirous of being absolutely positive about this at once, as the whole matter is stalemated pending your opinion.

"It is very likely that Capt. Brenneman will call upon you personally within a very few days and can supply you with more detailed information. However, in case he is unable to do so, could we, in this case, have your immediate reply so that the Construction project may not be detained longer. They must know the tax angle before proceeding further. I shall appreciate your attention to this matter at your very earliest convenience."

In the letter enclosed with your request, it is stated that the housing project, which is the subject of your request, is authorized under the act of Congress commonly known as the Wherry Act, the citation of which is given below. Such a housing project is not exempt from ad valorem taxation in Alabama.

Ordinarily, property of the United States is exempt from ad valorem taxation under Title 51, Section 2(a), Code of Alabama 1940, as amended by Act. No. 639, General Acts 1947, page 491. However, this is not an absolute exemption, and has no application if Congress has consented to such taxation. See Quarterly Report of Attorney General, Vol. 33, page 16. Therefore, your situation is controlled by the pertinent Federal Act, 63 Stat. 570, 12 U. S. C. A. (Supp.), Section 1748, August 8, 1949. Congress has waived tax exemption under this act. 12 U. S. C. A. (Supp.), Section 1748(f), provides:

"Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Commissioner under this title from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed."

The legislative purpose in enacting the above subsection is clear. The legislative history is found in U. S. Code, Congressional Service, 81st Congress, First Session, 1949, page 1757, 1764:

"Section 807 would provide that the acquisition of real property by the Commissioner under Title VIII would not exempt if (sic) from taxation."

Therefore, as stated, the property in question is subject to ad valorem taxation.

Yours very truly,

SI GARRETT,
Attorney General.

March 6, 1951

Hon. W. J. Terry
Superintendent of Education
State Department of Education
C A P I T O L

Schools — State Board of Education — Appropriations — Act. No. 673, General Acts 1947, page 514.

1. Appropriation of \$750,000 for fiscal years 1947-48, 1948-49, 1949-50 and 1950-51 from Alabama Special Educational Trust Fund Surplus Account for establishment, maintenance, and operation of four regional vocational and trade schools, respectively, does not revert at end of fiscal year.

2. The amount of \$75,000, reserved out of each of the above annual appropriations as a fund for operating and maintaining each school so established, likewise does not revert at the end of fiscal year.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of February 5, 1951, is as follows:

"Your attention is is invited to Act No. 673, General Acts 1947, page 515. Sections 2 and 3 of this Act provide for the establishment, construction, and maintenance of four trade schools—one each year for 1947-48 through 1950-51—and makes an appropriation of \$750,000 for each of such schools.

"A question has arisen under the provisions of Section 3 of this act which provides 'the Board must devote the entire appropriation herein made for each fiscal year to the establishment of the school required to be established during that year, except that, of the appropriation for each year, seventy-five thousand (\$75,000) dollars thereof shall be reserved as a fund for operating and maintaining such school.'

"Your official opinion is respectfully requested as to whether or not the \$75,000 appropriated for the maintenance and operation of such school has to be spent for same in the year in which the school was established or the construction thereof commenced. We are of the opinion that it was the intention of the Legislature that the \$75,000 appropriated was for the operation of the school and that in the event it took longer than one year to construct the school and equip it, that this \$75,000 would not revert but would be used for the operating and maintaining of the school built during one of the four-year periods, for that it would be without value to create and equip the school and have no funds for operating same.

"At this time your official opinion on this question is of paramount importance to this Department as the provisions of Section 4 of the act vest the control and management of the trade schools in the State Board of Education."

I am of the opinion that your inquiry should be answered in the negative.

Act No. 673, General Acts 1947, page 514, provides for the establishment, maintenance, and operation of regional vocational and trade schools.

Section 2 of Act No. 673, *supra*, provides as follows:

"Section 2. The schools to be established under this Act shall be constructed, leased, equipped, improved, enlarged, operated and maintained by an appropriation, which is hereby made, of seven hundred fifty thousand dollars, for each of the fiscal years 1947-48, 1948-49, 1949-50, 1950-51, from the Alabama Special Educational Trust Fund Surplus Account. At least one school which shall be similar to the Alabama School of Trades at Gadsden, shall be established, or the construction thereof commenced, during each of the fiscal years 1947-48, 1948-49, 1949-50, and 1950-51. Any construction shall be under the supervision of the State Building Commission subject to the provisions of Section 3."

The first and second sentences of Section 3 of Act No. 673, pertinent to your inquiry, are as follows:

"Section 3. The State Board of Education, upon the recommendation of the State Superintendent of Education, shall designate the site for each of the grade (sic) schools and determine the order in which the schools shall be established. The board must devote the entire appropriation herein made for each fiscal year to the establishment of the school required to be established during that year, except that, of the appropriation for each year, seventy-five thousand (\$75,000) dollars thereof shall be reserved as a fund for operating and maintaining such school"

The effect of the above is that \$750,000 is appropriated for each of the fiscal years in question for the establishment, maintenance and operation of the four schools so established, respectively.

In my opinion, these four appropriations of \$750,000 each are continuing appropriations for capital outlay, and do not revert or lapse at the end of the fiscal year under the provisions of the Budget and Financial Control Law. — **Southern Industrial Institution v. Lee**, 234 Ala. 404, 175 So. 365; **In Re Opinion of the Justices**, 234 Ala. 555, 176 So. 367; Quarterly Report of Attorney General, Vol. 20, page 329.

The proviso of Section 3 of Act 673, supra, relating to the reservation of \$75,000 of each of the annual appropriations to be used as a fund for operating and maintaining such schools, does not, in my opinion, cause a reversion of said \$75,000, or any part thereof, if not used during the fiscal year for which it was appropriated. This \$75,000 is part and parcel of each \$750,000 annual appropriation and in the same category. Moreover, there is a specific reservation concerning the \$75,000, which further evinces a legislative intent of nonreversion. The purpose of the reservation was to insure a necessary initial operating fund for a school when it was established rather than to permit the expenditure of the whole of an annual appropriation for physical facilities. It would have been practically impossible to have contemplated that a school would be completed and in operation during the fiscal year of the appropriation.

Yours very truly,

SI GARRETT,
Attorney General.

March 6, 1951

Hon. J. R. Lamberth, Mayor
Town of Millry
Washington County
Millry Alabama

Municipalities — Counties — Streets

It is the duty of the municipality, and not the duty of the county in which the municipality is located, to maintain the streets within the corporate limits of the municipality.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of January 26, 1951, is as follows:

"I am writing you this letter in my capacity of Mayor of Millry, Alabama, an incorporated town.

"The governing officials of the Town of Millry are under the impression that the Court of County Commissioners of Washington County, Ala-

bama are obliged to maintain the streets in Millry and we would like an opinion from you as to their duties in the premises. Simply stated: Is it the duty of the Court of County Commissioners or the duty of the officials of the Town of Millry to maintain the streets within the city limits of Millry?"

"Our Constitution and laws impose upon municipalities the power and duty to provide and maintain public streets. This is for the safety and convenience of the public as a police power and duty. **Branyon v. Kirk**, 238 Ala. 321, 191 So. 345; **Alabama Traction Company v. Selma Trust and Savings Bank**, 213 Ala. 269, 104 So. 517. Generally speaking, the roads, bridges and streets within the corporate limits of a municipality belong to and are controlled by such municipality. The power, authority and jurisdiction of a municipality in this regard is inherent. Biennial Report of Attorney General 1932-34, page 329." Quarterly Report of Attorney General, Volume 48, page 42.

Title 23, Section 132, Code of Alabama 1940, further stresses this duty of town officials by providing as follows:

"STREETS OF TOWN OUT OF ORDER FOR MORE THAN TEN DAYS: PENALTY. — In all towns or cities incorporated under any law of this state, if the inhabitants are exempt from working on the roads within the limits thereof, and any of the streets therein are out of repair for more than ten days at any one time, without a reasonable excuse therefor, to be determined by the court, the corporate officers of such town, or any one or more of them, are guilty of a misdemeanor."

In this connection, however, your attention is called to Title 23, Section 49, Code of Alabama 1940, which reads as follows:

"ROAD IN MUNICIPALITIES. — The court of county commissioners or like governing body of any county, with the consent or permission of the city council, or governing body of any municipality, may establish, construct and maintain any road, street or bridge within the corporate limits of such municipality, except in cases where the highway department has jurisdiction over such road, street or bridge."

The above section was construed by this office in Quarterly Report of Attorney General, Vol. 54, pages 32 and 105.

It is, therefore, my opinion that it is the duty of the officials of the Town of Millry, and not the governing body of Washington County, to maintain the streets within the corporate limits of the Town of Millry.

While not pertinent to your inquiry, I think it not inappropriate to call your attention to Act 284, General and Local Acts 1949, page 408, which places upon the State Highway Department the duty to maintain, repair, construct and reconstruct municipal connecting link roads in the cities and towns of Alabama.

Yours very truly,

SI GARRETT,
Attorney General.

March 6, 1951

Hon. William J. O'Connor
Acting Clerk, Circuit Court
Mobile County
Mobile, Alabama

Bastardy — Department of Corrections and Institutions — Costs and Fees.

The Department of Corrections and Institutions is not liable for the payment of costs in bastardy cases.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

A request for an official opinion from your predecessor, bearing date of January 4, 1951, is as follows:

"John Doe is convicted in the Circuit Court of Mobile County, Alabama, for the offense of bastardy. Upon his failure to give the bond as required in Title 6, Section 12, Code of Alabama 1940, he is sentenced to hard labor for one year.

"Should I, as Clerk of the Circuit Court, forward a bill to the Convict Department as provided by Title 45, Sections 69 and 96, of the Code of Alabama 1940, in the above-mentioned case? In other words, would the Convict Department be liable for its share of the costs in a bastardy proceeding just the same as any other criminal case in which the defendant is sentenced to hard labor?"

In my opinion, the Department of Corrections and Institutions is not liable for the payment of costs under the provisions of Title 45, Section 69, as amended by Act No. 57, General Acts 1945, page 58, and Section 96, Code of Alabama 1940, in bastardy cases; hence, you should not send a bill for costs in such cases to said department.

Proceedings in bastardy are neither criminal nor civil. Biennial Report of Attorney General, 1930-32, page 665.

The costs in bastardy proceedings, when the issue is found against the complainant, are taxed against her. Title 6, Section 23, Code of Alabama 1940.

When the issue in bastardy cases is found against the defendant, judgement must be rendered against him for costs. Title 6, Section 12, Code of Alabama 1940. It is formerly held by this office that when the defendant did not pay such costs or enter into a bond, as provided for in Title 6, Section 12, Code of Alabama 1940, he could be given an additional sentence to hard labor for the payment of said costs. Biennial Report of Attorney General, 1926-28, page 480. However, this opinion was overruled in Biennial Report of Attorney General, 1930-32, page 665; and under the present ruling, the defendant may not be sentenced for payment of costs in addition to his one year sentence, as provided for in Title 6, Section 13, Code of Alabama 1940. The only sentence that can be placed upon the defendant is a sentence to hard labor for the county for one year. Biennial Report of Attorney General, 1930-32, page 665. In no event can costs be charged to the

county. Biennial Report of Attorney General, 1930-32, page 665. Apparently, costs are not chargeable to the county because the case is not a criminal one.

I do not believe that costs in such cases may be paid out of the convict fund for the additional reason that the theory under which the Department of Corrections and Institutions pays costs in criminal cases is that a convicted criminal is turned over by the county to said department under an agreement between the county and the department. Title 45, Sections 96, 97, Code of Alabama 1940. The department then has the right to work said convict and receives the benefit of his labor. In the ordinary hard labor case, the county is entitled to the convict's labor, and since the State Department of Corrections and Institutions receives the benefit of this labor, the department remits to the credit of the county fine and forfeiture fund the net earnings of the county convict, after deducting the amount of costs and other expenses paid in behalf of such convict. Title 45, Section 98, Code of Alabama 1940.

On the contrary, in a bastardy case, the net earnings of the convict cannot properly be paid to the county fine and forfeiture fund as required of ordinary county convicts under the jurisdiction of the Department of Corrections and Institutions. Net earnings of defendants convicted in bastardy proceedings must be paid to the probate judge for the use and benefit of the child and for his support and education. Title 6, Section 13, Code of Alabama 1940. Since all of the net earnings of a person convicted of bastardy must be paid to the probate judge for the use and benefit of the child, it is my opinion that the Department of Corrections and Institutions should not be required to pay costs in such cases, since the department could have no benefit of the convict's earnings.

It has further been held by this office that a defendant convicted of bastardy does not come within the term "prisoners serving sentences," as used in our Pardon and Parole Law. Title 42, Sections 1-18, Code of Alabama 1940; Quarterly Report of Attorney General, Vol. 30, page 6. Bastardy is not a crime, and when the defendant is sentenced to hard labor of the county, he is sentenced not for the failure to pay a debt, but for his failure to perform a duty. *Paulk v. State*, 52 Ala. 427, 429.

The Department of Corrections and Institutions is not liable for the payment of costs in such cases. When a defendant is convicted in bastardy proceedings and does not pay the costs, after judgement has been rendered against him for costs, and execution is issued against him and returned "no property found," I know of no method whereby such costs can be collected, either from the county or from the Department of Corrections and Institutions.

Yours very truly,

SI GARRETT,
Attorney General.

March 6, 1951

Hon. J. T. Burch,
Tax Assessor,
Morgan County,
Decatur, Alabama

Refunds—Schools—Taxation—City Boards of Education.

A city board of education, upon application as provided by law, is authorized and required under Title 51, Sections 332 and 333, Code of Alabama 1940, to refund school taxes where such taxes have been paid under mistake of law or fact upon any illegal tax assessment.

Opinion by Assistant Attorney General Johnson.

Dear Sir:

Your request for an official opinion, bearing date of January 17, 1951, is as follows:

"I would like to get your official opinion on the following:

"In assessing an automobile last fall, we charged a municipal tax to a man who resides outside the corporate limits. When he called by this office to get a refund on the tax paid in error, we made application to the City of Decatur for said refund. The City of Decatur promptly made refund of the tax paid into the general fund, and referred the man to the City School Board for the tax paid into the City School fund. The City School Board has refused to make any refund as their attorney advised there was no provision in the statute for making a refund. Please advise if there is some way in which they can refund money paid to them in error, and if so, just how it should be handled.

"When the State, County, County School Board and City of Decatur, all make refunds on money paid to them in error, after proof of such error has been made, it does not seem to me that the City School Board should be an exception. I do not feel that this tax payer should bear the burden of our error, nor do I feel that I should be liable for the refund while the City Schools derive the benefit from the money."

In answering your inquiry, I deem it advisable to quote Title 51, Sections 332 and 333, Code of Alabama, 1940, which provide for the refund of school taxes illegally assessed:

"Section 332. In case of the payment of money under mistake of law or fact upon any illegal tax assessment made under color of any law, special or general of the state, or by any of its political subdivisions, authorizing the assessment or collection of taxes for any purpose whatever, whether for any municipality, for the payment of the creditors of any municipality, for schools, or otherwise, except the laws relating to the general funds of the counties, respectively, the same shall be recoverable by appropriate proceedings at law or in equity against the proper parties or their successors, with the usual rights of appeal, and that such payment was not made under compulsion or protest shall be immaterial." (Emphasis supplied.)

"Section 333. In case of any petition or application for the refund of any money paid as aforesaid, filed with any mayor and alderman or any other municipal or other board, circuit court, or other authority having the control or the administration or the supervision of the receipts or disbursement of any taxes collected under, or under color of, any law mentioned in the preceding section, it shall, upon proper proof, pay or order paid all such money so erroneously paid, and the tax collector, custodian, disbursing officer, or agency under it must obey such order, and also pay such costs as may in such petition or application or suit be awarded, adjudged or decreed in favor of such person making such erroneous payment; but this section shall not apply to assessments where owners of property received special benefits or where taxes were due but irregularly assessed thereon." (Emphasis supplied.)

Upon a careful reading of the above quoted sections, it is apparent that such sections provide for the refund of any monies paid under any illegal assessment made under color of any law of the state, or by any of its political subdivisions "for schools, or otherwise," and provide the procedure for obtaining such fund.

In answering a similar question in an opinion to Hon. F. S. Keeler, President, Board of School Commissioners of Mobile County, this office held that under Sections 332 and 333, supra, school taxes could be refunded when such taxes had been paid through error and mistake when they were not lawfully due to be paid. Quarterly Report of Attorney General, Vol. 58, page 5.

You are therefore advised that, under the facts here considered, the City School Board is authorized and required to make a refund of the taxes in question, upon proper application being made as provided in Section 333, supra.

Very truly yours,

SI GARRETT,
Attorney General.

March 6, 1951

Hon. W. L. Parrish,
Judge of Probate,
Chilton County,
Clanton, Alabama

Counties—Highways and Highway Department—Gasoline Tax—
Chilton County.

1. Chilton County is authorized to pay for a right of way for State highway purposes out of gasoline tax reserved "for the purpose of constructing and maintaining, in said county public highways of a permanent type of paved road" under Act No. 31, Local Acts 1936, p. 24.

2. When reimbursement to the county for the cost of said right of way is made by the State Highway Department, the amount of the reimbursement should be credited to fund out of which the cost was paid.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of February 20, 1951, is as follows:

"As Judge of Probate and ex officio Chairman of the Court of County Commissioners of Chilton County, Alabama, and on behalf of the Court of County Commissioners, I hereby request an official opinion to the following questions:

"Local Act, Extra Session 1936, Page 24-25, Number 31, S. 54-Thomas provides as follows:

"Be it enacted by the Legislature of Alabama:

"Section 1. That from and after such time when Chilton County, Alabama has fully paid such sums as it may be liable for, on account of the paving of the Clanton-Selma Highway in Chilton County, Alabama, shall be required to set aside and appropriate from the gasoline tax received by Chilton County from the State of Alabama, an amount equal to its share of said tax of 1c per gallon, for the purpose of constructing and maintaining in said County public highways of a permanent type of paved road.

"Section 2. That the expenditure by the Court of County Commissioners of Chilton County, Alabama of the gasoline tax of said County to the extent of the amount equal to its share of said Tax of 1c per gallon, for any other purpose than provided for in this Act is hereby declared to be unlawful and is hereby prohibited.

"Section 3. That all laws or parts of laws in conflict herewith be, and the same are hereby expressly repealed.

"Approved March 24, 1936.

"There has recently been rendered by the Probate Court of Chilton County, Alabama, a judgement of condemnation condemning a right-of-way for the purpose of building an overpass over the Louisville and Nashville Railroad at Mountain Creek in this county and for the purpose of relocating and straightening U. S. Highway No. 31, which is a public highway of a permanent type of paved road in this county and maintained by the Alabama State Highway Department. This right-of-way is being acquired at the request of the Alabama State Highway Department and Chilton County will at a future date be reimbursed by the Alabama State Highway Department for the cost of acquiring this right-of-way.

"Chilton County has sufficient funds accumulated under the above act which have not been encumbered for any other paving project, to pay such awards.

"Question: Can the Court of County Commissioners of Chilton County, Alabama, pay the cost of acquiring this right-of-way from paving funds accumulated under the above act?

"Question: If so, when Chilton County is reimbursed by the Alabama State Highway Department for the cost of acquiring this right-of-way, should the funds then received be credited back to the paving fund?

"An early answer to the foregoing questions will be greatly appreciated due to the fact that the county does not have available at this time other funds with which to pay the amounts awarded by the above condemnation decree. The above decree has a provision that it does not become effective until the payment of awards into the Probate Court, and I have been informed by the Alabama State Highway Department that they can pay the amount of the awards to Chilton County until the amount of the awards is paid into the Probate Court by the county."

I am of the opinion that both of your inquiries should be answered in the affirmative.

A county is authorized to pay for a right of way for public roads out of either the general fund or the gasoline tax fund of the county.—Quarterly Report of Attorney General, Vol. 23, page 263, and opinions cited therein.

A recent opinion of this office held that a county legally may, and should, advance the costs and damages assessed against the county in obtaining a right of way for State highway purposes, but such county must be reimbursed by the State for the entire costs thereof upon the acceptance of the right of way by the State Highway Department.—Quarterly Report of Attorney General, Vol. 60, page 120.

The limitation on the use of the gasoline tax under consideration, by Section 1 of Act No. 31, Local Acts 1936, page 24 (quoted in your letter of inquiry), does not, in my opinion, prevent the use of this tax for the payment of the cost of the right of way in question. This expenditure in effect is "for the purpose of constructing and maintaining in said county public highways of a permanent type of paved road" within the purview of the limitation. Moreover, reimbursement of this cost is to be made to the county by the State Highway Department.

When the State Highway Department reimburses the county for the cost incurred in acquiring the right of way in question, in my opinion the amount of said reimbursement should be credited to the fund out of which the cost was paid.

Yours very truly,

SI GARRETT,
Attorney General.

March 7, 1951

Hon. W. J. Terry,
State Superintendent of Education,
CAPITOL

St. Clair County—Schools—Taxation—Constitutional Amendments.

1. The constitutional amendment proposed by Act No. 322, General Acts 1949, page 467, after its adoption and ratification, levied a tax of fifty cents on each one hundred dollars worth of taxable property in St. Clair County for public school purposes.

2. The time during which the tax is to continue and the purpose thereof must be determined by the qualified electors of St. Clair County.

3. The election to determine the time during which the tax is to continue and the purpose thereof shall be held and governed by the applicable provisions of Article 7, Chapter 10, Title 52, Code of Alabama 1940.

4. The time for which said five-mill tax is to continue is not affected in any way by the present three-mill county-wide school tax now being collected in St. Clair County.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of February 9, 1951, is as follows:

"Act No. 322 of the Legislature of Alabama 1949 Regular Session, proposes an amendment to the Constitution levying a five-mill special school tax on all taxable property in St. Clair County.

"The Act sets up procedures not entirely in line with those presently operating in the State as we understand them. For this reason, I am requesting your opinion on the following points:

"1. Does the Act after its passage as an amendment to the Constitution, within itself, levy the tax, or should the Board of Revenue of St. Clair County levy the tax as is usually done after the voters of the county have passed upon it?

"2. Will it be necessary for the voters of St. Clair County to pass on the tax levy itself or simply on 'the time the tax is to continue and the purpose thereof' as indicated in Section 1?

"3. The method set up in the Act for calling and holding the county-wide election is not the same as that presently used for calling and holding county-wide school tax elections. Shall the local election be called, held, conducted, paid for, and governed otherwise in the same manner provided for an election on the school district tax authorized in Amendment III, Article XIX of the Constitution of Alabama, by Article 7, Chapter 10, Title 52 of the Code of Alabama (1940)?

"4. Is the time which the voters of St. Clair County may wish the proposed five-mill tax to run affected in any way by the termination date of the three-mill county-wide school tax of St. Clair County?

"I shall appreciate your opinion on the four questions set out above."

The constitutional amendment proposed by Act No. 322, General Acts 1949, page 467, was adopted by the qualified electors of the State of Alabama on December 13, 1949, and proclaimed ratified by the Governor on December 21, 1949, and thereby become a part of the Constitution of Alabama 1901.

Before proceeding to a categorical answer to your inquiries, I deem it advisable to quote the amendment, which is as follows:

"In addition to all taxes now or hereafter authorized by the Constitution and laws of Alabama, there is hereby levied and shall be collected a special school tax of fifty cents on each one hundred dollars worth of

taxable property in St. Clair County, the proceeds of which shall be used exclusively for public school purposes; provided, the time the tax is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the County and voted for by a majority of those voting at such election. The election provided for herein shall be called, held, conducted, paid for, and governed otherwise in the manner provided for an election on the school district tax authorized in Amendment III, Article XIX of the Constitution of Alabama, by Article 7, Chapter 10, Title 52 of the Code of Alabama (1940). The collection of the tax and the use of the proceeds shall also be governed by the applicable provisions of Article 7, Chapter 10, Title 52 of the Code of Alabama (1940)."

Your first two questions are so closely related, I deem it advisable to answer them together. The constitutional amendment levies the tax itself, and the Board of Revenue of St. Clair County has no authority, right, or duty, to levy any tax under this amendment.

Under the provisions of the amendment, the time for which the tax is to continue and the purpose thereof is left to the vote of the qualified electors of St. Clair County. It, therefore, necessarily follows that the tax levied by the amendment cannot be collected until the qualified electors of St. Clair County, by an election called for that purpose, have determined the time for which the tax is to continue and the purpose thereof. In other words, the levying of the tax by the amendment is not complete within itself, and the tax cannot be collected until the qualified electors of the county vote on how long the levy is to be in force and effect and the purpose thereof.

Specifically answering your first inquiry, it is not necessary for the Board of Revenue of St. Clair County to take any action in regard to the levying of this tax.

Specifically answering your second inquiry, the only question to be voted on by the electors of St. Clair County is the time the tax is to continue and the purpose thereof.

In answering your third inquiry, you are advised that the election to be held to determine the time the tax is to continue and the purpose thereof is to be governed by the applicable provisions of Article 7, Chapter 10, Title 52, Code of Alabama 1940. A mere reading of the sections contained in this chapter will point out the method by which the election is to be held.

In answer to your fourth inquiry, you are advised that the present three-mill county-wide school tax in St. Clair County is entirely separate and apart from the tax levied by the constitutional amendment under consideration and has nothing whatsoever to do with the five-mill tax levied by this amendment. Your attention is directed to the first sentence of the amendment, wherein it is stated: "In addition to all other taxes now or hereafter authorized by the constitution and laws of Alabama, there is hereby levied * * * a special school tax * * * for public school purposes." If the qualified electors of St. Clair County wish to have both taxes run concurrently, that is a question which is left to their sound discretion; on the other hand, if they desire to postpone the time for which the five-mill tax is to continue until after the three-mill county-wide tax has expired, then they may do so by expressing their desire at an election held for this purpose.

Yours very truly,

SI GARRETT,
Attorney General.

March 7, 1951

Hon. A. L. Spence,
Chairman, Board of Revenue,
Limestone County,
Athens, Alabama

Limestone County—Sheriffs—Assessments—Salaries.

1. Under Act No. 163, General and Local Acts 1949, p. 190, basing the sheriff's salary upon the gross assessed valuation of property within the county, the portion of the gross assessed valuation of property in the county which is in litigation should be included in determining the sheriff's salary.

2. The above holding is equally applicable to all officers of Limestone County whose salary is governed by the gross assessed valuation of property in the county.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of January 17, 1951 is as follows:

"Local Act No. 163 of the 1949 Legislature, amends Local Act No. 121, S-211, approved July 17, 1947 in the method of compensating the Sheriff of Limestone County, Alabama.

"Section 1. The Sheriff of Limestone County shall be paid an annual salary and may be furnished, at the expense of the county a house in which to reside during his continuance in office, which salary and allowance be in lieu of all other compensation or remuneration for the performance of his duties. The salary of the Sheriff shall be paid in equal monthly installments from the general fund of the county. The annual salary of the sheriff shall be governed by the gross assessed valuation of property, real and person, tangible and intangible, in Limestone County, as shown by the record of the Tax Assessor of Limestone County, as follows: When the tax assessor's records show that the gross assessed valuation of such property for the tax year ending on the thirtieth day of September of any year was less than eleven million (\$11,000,000) the salary of the sheriff for the year beginning on the first day of the next January shall be three thousand six hundred dollars (\$3,600); when these records show the gross assessed valuation is eleven million dollars (\$11,000,000) or more but less than eleven million two hundred and fifty thousand dollars (\$11,250,000) the salary of the sheriff for the year beginning on the first day of next January shall be three thousand eight hundred dollars (\$3,800); when these records show the gross assessed valuation is eleven million two hundred fifty thousand dollars (\$11,250,000) or more but less than eleven million five hundred thousand (\$11,500,000) the salary of the sheriff for the year beginning on the first day of the next January shall be four thousand dollars (\$4,000); when these records show the gross assessed valuation is eleven million five hundred thousand dollars (\$11,500,000) or more but less than twelve million dollars (\$12,000,000) the salary of the sheriff for the year beginning on the first day of the next January shall be four thousand two hundred dollars (\$4,200); when these records show the gross assessed valuation is twelve million dollars

(\$12,000,000) or more but less than twelve million five hundred thousand dollars (\$12,500,000) the salary of the sheriff for the year beginning on the first day of the next January shall be four thousand eight hundred dollars (\$4,800); when these records show the gross assessed valuation is twelve million five hundred dollars (\$12,500,000) or more but less than thirteen million dollars (\$13,000,000) the salary of the sheriff for the year beginning on the first day of the next January shall be five thousand four hundred dollars (\$5,400); and when these records show the gross assessed valuation is thirteen million dollars or more the annual salary of the sheriff for the succeeding calendar year shall be six thousand dollars (\$6,000).

"The gross assessed valuation of property as shown by the Tax Assessor's records for the year ending on the thirtieth day of September, 1950 was \$12,880,524.00, however there is an amount \$1,191,353.00 that is in court litigation. Your official opinion is requested on the following questions.

"1. Does this act authorize the county to pay the sheriff of Limestone County on the basis of the gross assessment of \$12,880,524.00; or must his salary be based on the gross assessment less the amount now in litigation.

"2. Will this opinion cover all county offices that are governed by local acts fixing their compensation in the same manner.

"Your prompt answer will be greatly appreciated as we will need this information very shortly."

Under Act No. 163, General and Local Acts 1949, p. 190, basing the sheriff's salary upon the gross assessed valuation of property within the county, the portion of the gross assessed valuation of property in the county which is in litigation should be included in determining the sheriff's salary.

To answer your first question specifically, the sheriff's salary should be based on the gross assessment of \$12,880,524.00. It is not necessary to deduct the \$1,191,353.00 of this amount which is in litigation.

It is, of course, true that the purpose of the Act in question was to gear the sheriff's salary to the total property assessments in the county. It is also true that the instant situation is analogous to the payment of tax assessors; but there is a significant difference. Under the provisions of Title 51, Section 30, Code of Alabama 1940, tax assessors are to be paid out of the **first monies collected**. Thus, the tax assessor, who must depend upon monies actually collected for his salary, is in a different position from the sheriff in the instant Act, whose salary is merely based upon the amount of the assessments, and does not depend upon actual collection of the taxes assessed. Therefore, the opinion of this office in Quarterly Report of Attorney General, Vol. 60, p. 19, as well as such cases as **Crow v. Board of School Commissioners**, 228 Ala. 107, 152 So. 26, are distinguishable.

In answer to your second question, you are advised that the holding of this opinion is equally applicable to all officers of Limestone County where salary is governed by the gross assessed valuation of property in the county.

Yours very truly,

SI GARRETT,
Attorney General.

March 15, 1951

Hon. J. D. Reese, Jr.
Acting Director,
Department of Corrections and Institutions,
CAPITOL

Department of Corrections and Institutions—Convicts—Prisoners
—Sentences.

The provisions of Act No. 534, General Acts 1943, page 508 (Title 45, Section 253, 1949 Cumulative Pocket Part, Code of Alabama 1940), relative to deductions from penitentiary and hard labor sentences for good conduct, are applicable only to sentences for a definite term, other than life, and not to indeterminate sentences.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of February 28, 1951, is as follows:

"In 1939 the indeterminate sentence statute in this state was repealed. General Acts of Alabama 1939, page 438. There are still several prisoners serving indeterminate sentences who were sentenced prior to the repeal of this statute.

"We should like your official opinion as to whether or not these prisoners are entitled to the deductions from their sentences for good conduct as provided for in Title 45, Section 253, Supplement, Code of Alabama 1940. If your answer is in the affirmative, should the deduction be based on the minimum or the maximum sentence."

I am of the opinion that the first part of your inquiry should be answered in the negative.

Act No. 534, General Acts 1943, page 508 (Title 45, Section 253, 1949 Cumulative Pocket Part, Code of Alabama 1940), provides for deductions from penitentiary and hard labor sentences for good conduct. Section 1 of said act provides in pertinent part as follows:

"Section 1. DEDUCTIONS FROM SENTENCES FOR GOOD CONDUCT.—Each prisoner who has been or shall hereafter be convicted of any offense against the laws of the State of Alabama, and is confined, in execution of the judgement or sentence upon any such conviction, in the penitentiary, or at hard labor for the county, for a **definite term, other than for life**, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence to be estimated as follows, commencing on the first day of the execution of the sentence: . . ." (Emphasis supplied.)

It will be noted that the act is applicable only to sentences for a definite term, other than life. An indeterminate sentence, in my opinion, cannot be construed as a **sentence for a definite term** so as to come within the purview of Act. No. 534, *supra*.

Since the answer to the first part of your inquiry is in the negative, it is not necessary to answer the second part of your inquiry.

Yours very truly,

SI GARRETT
Attorney General

March 16, 1951

Hon. W. L. Parrish
Judge of Probate
Chilton County
Clanton, Alabama

Counties — Claims.

Under the provisions of Title 12, Section 115, Code of Alabama 1940, a member of a county governing body, having personal knowledge of the facts, technically is authorized to itemize and swear to a claim on behalf of a claimant. However, such a procedure is deemed inadvisable as a matter of policy.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of February 20, 1951, is as follows:

"As Judge of Probate and ex officio Chairman of the Court of County Commissioners of Chilton County, Alabama, and on behalf of the Court of County Commissioners, I hereby request an official opinion on the following question:

"Code of 1940, Title 12, Section 115, provides: 'that no claim against the county shall be passed upon or allowed by the court of county commissioners unless it is itemized and sworn to by the claimant, or some person in his behalf having personal knowledge of the facts;'

"Assuming that a member of the Court of County Commissioners has personal knowledge that a claim against the county is true and correct, due and unpaid, and such commissioner appears personally before a notary public, and after first being duly sworn, signs the claim stating the account is itemized, true and correct, due and unpaid.

"Question: Does such claim comply with the foregoing code section?

"To state it plainly, what I want to know is whether or not it is proper for a member of the court of county commissioners, who is not in the employment and has no connection with the claimant, to sign a claim in his behalf?

"I am enclosing herein a sample claim which will clearly illustrate to you the information I want."

In answer to your inquiry, it is my opinion that the foregoing procedure would be a technical compliance with Title 12, Section 115, Code of Alabama 1940. However, since this method of submitting claims may invite criticism, it would be advisable for either the claimant, or someone other than a member of the county governing body, to itemize and swear to such a claim.

Title 12, Section 115, *supra* (quoted in pertinent part in your letter of inquiry), authorizes the claimant, "or some person in his behalf having personal knowledge of the facts," to itemize and swear to a claim. I know of no technical inhibition against a member of a county governing body itemizing and swearing to a claim on behalf of a claimant if he has personal knowledge of the facts.

As a matter of policy, I do not think such a procedure is advisable. The county governing body audits and allows such claims. Title 12, Section 114, Code of Alabama 1940. Under this procedure, a member thereof is placed in the position of auditing and allowing a claim which he has itemized and sworn to on behalf of a claimant. Moreover, criticism is invited by this procedure, in that a county official is acting as an agent for another in the collection of county funds, thus possibly creating the impression of a personal interest, financial or otherwise, by said official in a contract with the county.

While there is no occasion here to apply the rule of administrative construction, since the statute is not of doubtful meaning, I deem it advisable to point out that the administrative construction placed on Section 115, *supra*, by the Department of Examiners of Public Accounts for a period of many years is that a member of a county governing body may not itemize and swear to a claim on behalf of a claimant, even though he may have personal knowledge of the facts.

Yours very truly,

SI GARRETT
Attorney General

March 23, 1951

Hon J. H. Boockholdt, Superintendent
Chilton County Board of Education
Clanton, Alabama

Chilton County — County Superintendent of Education — Constitutionality — Compensation.

Act No. 359, General and Local Acts 1949, page 534, imposing extra, new, and additional duties upon the County Superintendent of Education of Chilton County, and providing additional compensation for the performance of such extra, new, and additional duties, is constitutional.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion, bearing date of February 7, 1951, is as follows:

"Recently, in your office, I discussed with you the fact that Mr. Lacey L. Robertson, State Examiner, had questioned the constitutionality of Act No. 359 of the 1949 Legislature, which pertains to additional compensation to the Superintendent of Education of Chilton County based on additional duties. Mr. Robertson suggested that I obtain this opinion from you. I will appreciate very much if you will give me this written opinion at your earliest convenience."

In answer to your request, you are advised that Act No. 359, General and Local Acts 1949, page 534, imposing extra, new, and additional duties upon the Superintendent of Education of Chilton County, and providing additional compensation for the performance of such extra, new, and additional duties, is constitutional.

This act does not violate Section 281 and related sections of the Constitution of Alabama 1901. Said Section 281 reads as follows:

"The salary, fees, or compensation of any officer holding any civil office of profit under this state or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

The Supreme Court has held many times and this office has ruled many times, in compliance with the holdings of the Supreme Court, that when an act of the legislature imposes extra, new, and additional duties upon an incumbent of a public office, the legislature may also award additional compensation for the performance of such extra, new, and additional duties of the Constitution of Alabama 1901.

Act No. 359, *supra*, imposes extra, new, and additional duties of a substantial nature upon the County Superintendent of Education of Chilton County, and an increase in compensation for the performance of such duties during the term of office of the present incumbent is not violative of Section 281, *supra*, and related sections of the Constitution of Alabama 1901. **Taylor v. Davis**, 212 Ala. 282, 102 So. 433. Cf. Quarterly Report of Attorney General, Vol. 58, page 93.

The principle of law hereinabove set out is so well established by the decisions of the Supreme Court and opinions of this office that it may now be said that it is fundamental, elemental, and academic.

I have responded to your inquiry at this length, and through the medium of an official opinion, only because of the apparent insistence of an examiner of public accounts that an official opinion on the matter be rendered, and not because I believe such formal consideration of the matter to be warranted by the merits. I deem further comment unnecessary.

Very truly yours,

SI GARRETT
Attorney General

March 28, 1951

Hon. Bert E. Thomas
Tax Assessor
Mobile County
Mobile, Alabama

Taxation — Ad Valorem Taxes — Exemptions

Real property of a corporation, organized to engage in, and engaging in, amateur theatrical and literary activities, is exempt from ad valorem taxation when such property is employed or used in the regular business and activities of the corporation.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of January 16, 1951 is as follows:

"I am enclosing herewith a copy of the certificate of incorporation of the Joe Jefferson Players, Incorporated, as filed for record in the office of the Judge of Probate of Mobile County.

"My investigation into the activities of the said Joe Jefferson Players, Incorporated, reveals that they are in effect an amateur theatrical and literary group who engage in varied literary and theatrical activities such as the reading and study of various forms of literary productions, the coaching of individual members as to diction and the art of acting on the stage, and in the general production of amateur theatrical performances so as to develop the histrionic ability of those members desiring to fit themselves for the legitimate theatre.

"The Joe Jefferson Players, Incorporated, own certain real property in the City of Mobile, devoted solely to their purposes, and the question has arisen as to the exemption status of this property. It is my information that this association has been exempt from all forms of taxation, Federal, State and Municipal except ad valorem taxation, and it is my conclusion after studying their articles of incorporation and investigating the type of activities in which they engage that they are exempt from ad valorem taxation under Paragraph 2, Title 51 of the Code of Alabama as being devoted to purposes purely educational, and in addition as being a literary society.

"Please advise me if my conclusions are correct in the premises."

The real property of the Joe Jefferson Players, Inc., is exempt from ad valorem taxation under Title 51, Section 2(d), Code of Alabama 1940, as amended by Act No. 639, General Acts 1947, page 491. This exemption covers the property of literary and scientific institutions and literary societies, when such property is employed or used in the regular business of such institution.

Your facts indicate that the corporation involved is an amateur theatrical and literary group, organized for the reading and study of literary produc-

tions, and for the production of amateur theatrical performances. The corporation also is engaged in instruction in literary and dramatic fields.

Your facts further indicate that the property in question is devoted solely to the purposes of the corporation.

Yours very truly,

SI GARRETT
Attorney General

March 29, 1951

Hon. Tom C. Garner
Judge of Probate
Jefferson County
113 Courthouse
Birmingham 3, Alabama

Filing Tax — Taxation — National Banks.

1. Where a mortgage is made to a national bank as mortgagee, and the national bank assigns its interest as mortgagee to a third party which is not a national bank, a judge of probate may accept a filing tax for the privilege of re-recording this mortgage even though this mortgage has been previously recorded without payment of a mortgage filing tax.
2. The assignment from the national bank to the third party may not be recorded without payment of the deed filing tax.
3. Quarterly Report of Attorney General, Vol. 60, page 91, withdrawn.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of June 7, 1950 is as follows:

"Will you please give me your opinion with respect to the following situations which now confront me.

"Situation 1. A mortgage made to a national bank, as mortgagee, has heretofore been filed in and is recorded in this office, but the mortgage privilege recording tax was not, and has not been paid thereon. This mortgage has been purchased by a purchaser which is not a national bank, and which is not itself exempt from payment of the mortgage privilege recording tax on any mortgage which is made to it. This purchaser has received a written assignment of said mortgage, which assignment has been filed for record in this office heretofore and upon which the deed tax has been paid. The said purchaser of said mortgage now offers to rerecord the mortgage and pay the recording fee and mortgage tax thereon out of its own funds and for its own account, and not for the account of the said national bank. May I legally receive the payment of the mortgage privilege recording tax under these circumstances?

"Situation 2. A mortgage made to a national bank, as mortgagee, has heretofore been filed in and has been recorded in this office, and the

mortgage recording privilege tax has not been paid thereon. This mortgage has been purchased by, and a written assignment thereof executed and delivered to, a purchaser which is not a national bank and which is not exempt from the payment of the mortgage tax on mortgages made to it. Said purchaser now presents to me the said original mortgage for recordation and tenders the payment of the recording fee and the mortgage recording privilege tax on said mortgage, and also tenders the assignment of said mortgage to me for recordation offering to pay only the recording fee on said assignment. At the same time this assignee corporation tenders to me a written statement that it is paying the said mortgage tax for its own account, and not for the account directly or indirectly, of the said national bank, the original mortgagee. May I accept the payment of the mortgage recording privilege tax under these circumstances, and may I also accept the said assignment of said mortgage for record without the payment of deed tax thereon? The order of acceptance and filing of the instruments would be first the mortgage, and then the assignments."

There appears to be nothing to prohibit a re-recording of a mortgage which had previously been recorded without payment of a mortgage filing tax because the mortgage had been made to a national bank as mortgagee, and therefore was not susceptible to the mortgage filing tax.

However, I should like to call your attention to the opinion to you under date of April 19, 1950 (Ms.). I assume from your statement of facts in "Situation 1" that the assignment of the mortgage in question is a bona fide transaction, and is not merely a subterfuge to enable avoidance of the holding of the above-mentioned opinion. If there has been a bona fide assignment of the interest of the national bank to the purchaser, then there is nothing to prevent your accepting a payment of the mortgage filing tax when the mortgage is offered for re-recording.

The only difference between your "Situation 1" and your "Situation 2" is that in "Situation 2" there is an attempt to avoid payment of the deed filing tax when the assignment from the national bank to the purchaser is offered for record. The theory for such avoidance is that if the mortgage is re-recorded before the deed assignment is recorded, the transaction will come within the exemption in Title 51, Section 618, Code of Alabama 1940, where the instrument of transfer of mortgages upon which the mortgage tax has been paid may be recorded without payment of a deed filing tax.

There is no substance to this theory. The key date is the date on which the assignment was made. On this date, no mortgage filing tax had been paid for the privilege of recording this mortgage. See: Quarterly Report of the Attorney General, Vol. 17, page 317, which holds, in part, that the key date for determining the value of the interest conveyed is the date of the execution of the instrument rather than the date of recordation. That also is authority here. In addition, the opinions in Quarterly Report of Attorney General, Vol. 12, page 93, and Vol. 15, page 229, make it clear that the recording of an assignment of mortgage by a national bank to a third party, where no mortgage tax has been paid for the privilege of recording the mortgage, is subject to a deed filing tax.

This opinion is substituted for an opinion to you under date of August 23, 1950, appearing in Quarterly Report of Attorney General, Vol. 60, page 91, to correct a typographical error in the last paragraph thereof, which has just come to my attention. A comparison of the last paragraph of that opinion with the above paragraph will show the necessity for this correction. The opinion to you, supra, is hereby withdrawn.

Very truly yours,

SI GARRETT
Attorney General

March 29, 1951

Hon. W. J. Terry,
State Superintendent of Education,
State Department of Education
C A P I T O L

Officers and Offices — County Boards of Education — City Boards of Education — Schools — Legislature.

A person employed by a county or city board of education as a principal or teacher may, while so employed and while being paid for such employment, also legally serve as a member of the Legislature, and may receive the per diem provided by law for members of the Legislature.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of February 26, 1951, is as follows:

"The approaching work of the interim committees in connection with the 1951 Legislature, as well as the regular session of the Legislature, poses a question relative to principals and teachers who are employees of county and city boards of education and also members of the Legislature. I should like to have your opinion on the following question: May a school principal or a teacher employed by a board of education receive pay as a principal or teacher and at the same time serve in the State Legislature and receive his per diem payment as a member of said Legislature? I should appreciate your rendering this opinion at your earliest convenience."

In an opinion of this office dated March 29, 1949, and found in Quarterly Report of Attorney General, Vol. 54, page 176 (a copy of which is enclosed), it was held that a person employed by the county board of education as a school teacher may legally serve as a member of the board of registrars of the county, and may receive the per diem provided by law for attending meetings of such board.

The question presented by your inquiry is very similar to the question considered in the above opinion, and it is my conclusion that the reasoning advanced and the conclusion reached therein are applicable to your inquiry.

Any question as to whether or not serving as a member of the Legislature would interfere with the duties of an employee of the county or city board of education in the capacity of a principal or teacher, is a matter that addresses itself to the employing board. The qualifications of members of the Legislature is a matter that is solely and exclusively within the power of that body. **In Re Opinion of the Justices** (Ms. July 11, 1950), 47 So. 2d 586.

It is, therefore, my opinion that a person employed by a county or city board of education as a principal or teacher may, while so employed and while being paid for such employment, also legally serve as a member of the Legislature, and may receive the per diem provided by law for members of the Legislature.

Yours very truly,

SI GARRETT
Attorney General

March 30, 1951

Hon. H. W. Clayton
Judge of Probate
Marshall County
Guntersville, Alabama

Taxation — Exemption — Sales Tax — Hospitals.

Purchases by the Marshall County Hospital Board for use in the Marshall County Hospital are exempt from Sale Tax.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of January 24, 1951 is as follows:

"The Marshall County Hospital Board was organized under the provisions of Act. No. 46, Acts of Alabama of 1949, page 68. A special tax has been enacted for hospital purposes in Marshall County, Alabama, by a vote of the people. The Marshall County Hospital Board has been designated by the governing body of Marshall County as the agency of Marshall County to acquire, construct, equip, operate and maintain public hospital facilities, and to receive the proceeds of the special tax.

"Inasmuch as a controversy has arisen as to whether the Marshall County Hospital Board must pay sales taxes and excise taxes in making purchases within the State of Alabama, your opinion as Attorney General of the State of Alabama is respectfully requested as to the following question:

"Under the circumstances as above stated must the Marshall County Hospital Board pay sales taxes and excise taxes in making purchases within the State of Alabama?"

The purchases which you describe are for use in the Marshall County Hospital, a public corporation and an agency of the county. The sales, therefore, are to the county, and the exemption in Title 51, Section 755(b), Code of Alabama 1940, as amended by Act No. 211, General and Local Acts 1949, page 302, applies. This exemption is granted because the hospital is an agency of the County, and is not granted on the ground that a hospital is a charitable institution.

The following opinions of this office also concern exemptions from sales tax of agencies of the state, counties and municipal corporations: Quarterly Report, Vol. 52, page 184; Vol. 42, page 34; Vol. 47, page 35; Vol. 18, page 310; and Vol. 15, page 171.

I cannot answer your general inquiry concerning "excise taxes" without reference to the specific "excise taxes" to which you refer.

Very truly yours,

SI GARRETT
Attorney General

March 30, 1951

Hon. H. W. Clayton
Judge of Probate
Marshall County
Guntersville, Alabama

Marshall County — Hospitals — Taxation — Constitutional Amendments.

1. The Marshall County Hospital Board cannot use any part of the four mill tax levied under the provisions of Amendment No. LXXII to the Constitution of Alabama 1901, proposed by Act No. 357, General Acts 1947, page 241, to pay for hospitalization of indigent persons in hospitals which are already established in said county.
2. The Hospital Board of Marshall County may not contribute any part of said tax to aid in the construction of a tuberculosis sanatorium located at Gadsden, Alabama.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of December 8, 1950, is as follows:

"On October 17, 1949, the Court of County Commissioners of Marshall County passed a resolution calling an election to be held on December 13, 1949, at which time the question was to be submitted to the electorate of Marshall County, as to whether or not a special County tax, not to exceed 4 mills on each dollar of taxable property in the county will be levied, to be used solely for acquiring by purchase, lease or otherwise, constructing, operating, equipping, or maintaining County Hospital or other public health facilities. The election was held on the scheduled date, and the tax levy was passed by the electorate. A copy of the ballot is shown below:

"'Shall there be levied a Special County Tax of four mills on each dollar of taxable property in the county, to be used solely for acquiring, by purchase, lease or otherwise, constructing, operating, equipping or maintaining County Hospital or other public hospital, non-profit hospital and public health facilities?'

"On February 20, 1950, the 'Marshall County Hospital Board' was incorporated, copy of the Certificate of Incorporation being on file in the office of the Secretary of State. On April 17, 1950, the Directors of the Marshall County Hospital Board were appointed by the Court of County Commissioners, as set out in the certificate of incorporation. Mr. H. A. Smith, of Guntersville, is Chairman of the Board of Directors. The Hospital Board, as constituted, is functioning at the present time in that it has made a survey of the hospital needs of this county and has made certain recommendations.

"The money collected from this four mill tax levy is being deposited by the Tax Collector in the Hospital Board account, and will accumulate there until the board makes some definite plan to use it. In the meantime, we are asked daily to help with medical aid for paupers. For the

past several years, this item of medical aid to indigents has been a large item of expense from our General Fund.

"I want your opinion as to whether or not this Hospital Board can use a portion of this four mill tax levy in paying for hospitalization for paupers in hospitals which are already established; that is, until facilities are acquired by the Hospital Board.

"I also want your opinion as to whether a portion of this four mill tax levy can be used for participation in the Tuberculosis Sanitorium at Gadsden. Marshall County has agreed to contribute \$16,000.00 toward construction of the Fourth District Sanitorium in Gadsden, and we want to know if the Marshall County Hospital Board can legally use funds derived from the tax levy to participate in the construction of this sanitorium.

"I shall appreciate an opinion from you on each of the questions as soon as possible."

My answer to both of your questions is in the negative.

The hospital tax referred to in your request was levied under the provisions of Amendment No. LXXII to the Constitution of Alabama 1901, proposed by Act No. 357, General Acts 1947, page 241, which amendment was ratified by the qualified electors of the State at the general election held in November, 1948, and was proclaimed ratified by the governor on November 15, 1948.

This amendment authorized every county of the State except Mobile, Montgomery and Jefferson Counties, to levy a tax "not exceeding four mills on each dollar of taxable property in the county to be used solely for acquiring, by purchase, lease, or otherwise, constructing, operating, equipping, or maintaining county hospitals, or other public hospitals non-profit hospitals and public hospital facilities."

The question submitted to the qualified electors of your county as the same appears on the ballot used in that election was in substantially the same language as used in Amendment No. LXXII, *supra*.

It therefore necessarily follows that the wording of the amendment, and the wording of the ballot used in the election called for the purpose of determining whether or not this tax should be levied, does not permit the use of the proceeds of the tax in applying for hospitalization of indigent persons in hospitals which are already established in your county.

The question presented by your second inquiry was considered by the Supreme Court of Alabama in *In re Opinion of the Justices* (Ms. April 26, 1949) 41 So. 2d 559. In this opinion it was held that the proceeds of the tax levied under Constitutional Amendment No. LXXII could only be used to acquire and maintain a hospital "located within the county, operated under the supervision of the county board or such other agency as the legislature may prescribe."

You are therefore advised that the Marshall County Hospital Board may not contribute \$16,000 of the proceeds of this tax to aid in the construction of a tuberculosis sanitorium located in Gadsden, Alabama.

Yours very truly,

SI GARRETT
Attorney General

March 30, 1951.

Hon. L. C. Walker, Chairman,
Board of Revenue and Control,
Shelby County,
Columbiana, Alabama.

Jails — Sheriffs — Shelby County — Funds.

1. The expenditure of funds by the governing body of Shelby County from the "Contingent Fund" provided in Section 29, Act No. 189, General and Local Acts 1949, page 206, for repairing and equipping a kitchen located in a house owned by the county, adjacent to the jail, and occupied as a residence by the sheriff of said county, would be for the benefit of the sheriff and not in the interest of the county as a whole, and for this reason in violation of Constitution of Alabama 1901, Section 94.

2. The governing body of Shelby County may legally expend funds from the general fund of the county for the purpose of repairing and maintaining a residence owned by the county adjacent to the jail and occupied by the sheriff as a residence.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

A request for an official opinion from your predecessor, addressed to my predecessor, is as follows:

"For many years the Sheriff of Shelby County has resided in a house adjacent to the County Jail which house is owned by the County. Food for the prisoners confined in this Jail has been prepared in the kitchen of this house. The kitchen equipment in this house is in very bad repair and the question of spending County funds to repair certain equipment and replace other pieces of equipment has arisen.

"We have recently received an opinion from your office to the effect that County Funds may not be spent upon kitchen equipment for a Jail unless the kitchen is an integral part of the Jail building.

"The present Board of Revenue and Control of Shelby County was created by an act of the Legislature which appears on Page 206 et seq. of the General and Local Acts of the 1949 Legislature Session. Section 29 empowers the Board to appropriate, out of any monies in the County Treasury, not otherwise appropriate, and to expend not exceeding the sum of \$2,000.00 per annum for any purposes, not otherwise provided for by law, which in their judgment are worthy and for the best interest of the County . . .

"We shall appreciate it if you will advise us whether or not under the portion of the act set forth above the County Board of Revenue and Control may legally spend money out of the County General Fund for the purpose of repairing and equipping this jail kitchen.

"We shall also appreciate it if you will advise us whether or not this Section 29 of the act mentioned above would serve to authorize the

County Board of Revenue and Control to spend money out of the County General Fund for the purpose of repairing and maintaining this residence which is owned by the County. This residence is in a bad state of repairs and unless other repair work is effected the residence will greatly depreciate in value."

In an opinion of this office under date of May 16, 1939, Quarterly Report of Attorney General, Vol. 15, page 151, it was held that the county was not liable for the purchase of a stove and kitchen utensils used in preparing food for prisoners in the jail, when the kitchen in which such food is prepared is not located in the jail. As pointed out in this opinion, the authority of the county to purchase a stove and kitchen utensils, when such kitchen is located in the jail, is based on the construction placed on Section 4878, Code of Alabama 1923 (Title 45, Section 184, Code of Alabama 1940), in the case of **Holcombe v. Mobile County**, 155 So. 640, 229 Ala. 77, which section is as follows:

"The expense incident to the construction, maintenance, sanitation, healthfulness and hygiene of each county jail, prison, and almshouse in this state shall be paid out of the funds of the county in which such institution is located and of the town or city, if the institution be a town or city institution."

Section 29 of Act No. 179, General and Local Acts 1949, page 206, provides in part as follows:

"Section 29. The Board shall have the power, and are hereby authorized to appropriate, out of any monies in the County Treasury, not otherwise appropriated, and to expend not exceeding the sum of \$2000.00 per annum for any purposes, not otherwise provided for by law, which in their judgment are worthy and for the best interests of the County, the fund hereby authorized to be known as the 'Contingent fund' . . ."

In an opinion of this office dated January 16, 1945, and found in Quarterly Report of Attorney General, Vol. 39, page 24, it was held that the governing body of Montgomery County could appropriate money from its "Contingent Fund" to purchase copies of pending legislation that in the judgment of said governing body may be necessary to keep itself informed as to pending legislation that might affect the interest of the county. The statute under consideration in this opinion (Act No. 430, Local Acts 1939, page 259) is very similar to Section 29, supra. While Act No. 430, supra, authorizes the expenditure of the "Contingent Fund" provided therein for "any county purposes not otherwise provided for by law," and Section 29, supra, authorizes the expenditure of the "Contingent Fund" provided therein for "any purposes, not otherwise provided for by law," I think it will be conceded that the purposes for which the fund provided in Section 29, supra, may be expended are for county purposes.

In the opinion in Quarterly Report of Attorney General, Vol. 39, supra, it was said:

"These words ('county purposes not otherwise provided for by law that in their judgment are worthy and for the interest of the county'), in my opinion, vest in the county governing body a broad discretion in selection of the purposes for which the fund may be disbursed, subject to restriction only by any constitutional provision that might inhibit the disbursement.

"The only restriction upon such disbursement would seem to be that it must not be made in violation of Section 94 of the Constitution 'in aid

of, or to any individual, association, or corporation whatsoever.' In other words the disbursement must be made for some public purpose as distinguished from a private purpose, and must be made in the 'interest of the county' as determined by the county governing body.

"Numerous powers of county governing bodies are declared at length and in detail in Section 12 of Title 12 of the Code of 1940. Manifestly by the local act in question the legislature intended to confer additional powers on the Montgomery County Board of Revenue, and to expand and extend those enumerated in Section 12, Title 12 of the Code. Otherwise there was no occasion for the act at all, and it is not to be presumed the legislature intended to do a vain or nugatory thing. Some field of operation must be given the act if that is reasonably possible and not in conflict with constitutional restraint.

"Any expense or disbursement that would in the judgment of the Board contribute to the interest of the county as a whole and protect such interest would, in my opinion, come within such field of operation of the local act. I find no authoritative definition of the words 'county purposes' by our court of last resort, but such words have been variously defined by the courts of other states. **10 Words and Phrases 107.**

"Among such definitions it has been said that the words denote 'purposes which promote the welfare of the county as a whole and its citizens,' and such 'matters of public concern as may peculiarly affect the people of the county in their property and local interests.' **Johnson v. Durham, 191 Ark. 192, Gadsden County v. Green, 22 Fla. 102, 110."**

In answer to your first inquiry, it is my conclusion that the expenditure of the "Contingent Fund" provided for in Section 29, *supra*, for repairing the kitchen in question would be for the benefit of the sheriff and not in the interest of the county as a whole, and for this reason in violation of Constitution of Alabama 1901, Section 94. It is the duty of the sheriff to maintain and equip the kitchen used in the preparation of food for prisoners in the jail when such kitchen is not located in the jail.

In reference to your second inquiry, your attention is called to an opinion of this office dated January 2, 1936, and found in Quarterly Report of Attorney General, Vol. 2, page 4, in which it was held that the county was without authority to expend funds for the construction of a building to be occupied as living quarters by the sheriff or jailer, the kitchen of said building to be used to prepare meals for prisoners in the jail. However, your inquiry is not concerned with the construction of a building to be used for living quarters by the jail or sheriff, but with repair of a residence owned by the county adjacent to the jail, which has been occupied for many years by the sheriff as a residence.

Under the general law, a county governing body has authority "to direct and control the property of the county as it may deem expedient according to law." Title 12, Section 12, Code of Alabama 1940, as amended by Act. N. 344, General Acts 1945, page 560. Section 1 of Act No. 179, *supra*, provides that the Board of Revenue and Control of Shelby County "shall have and exercise all of the powers, duties, limitations, and responsibilities, and in the same manner, and its members subject to all penal provisions of the General laws of Alabama, now in effect, or hereinafter enacted, governing Courts of County Commissioners, and the members thereof, but only in so far as they are consistent with the provisions of this Act." There is no provision in said Act which is in conflict with the general law of the State in reference to the control of the property of the county by the county governing body.

The broad power of the county in the exercise of its authority and discretion in management, control, maintenance, and construction of county public buildings and improvements was considered by the courts in the cases of **Board of Revenue of Covington County v. Merrill**, 193 Ala. 521, 68 So. 971, and **Corning v. Patton**, 236 Ala. 354, 182 So. 39. See also Quarterly Report of Attorney General, Vol. 48, page 262; Vol. 48, page 7; Vol. 60, page 106.

Answering your second inquiry, it is my opinion that the governing body of Shelby County may legally expend funds from the general fund of the county for the purpose of repairing and maintaining a residence owned by the county adjacent to the jail and occupied by the sheriff as a residence.

Yours very truly,

SI GARRETT
Attorney General

March 30, 1951

Hon. Henry W. Smith, President
Etowah County Board of Revenue
Gadsden, Alabama

Military and Naval Affairs — State — Counties — Municipalities
— Officers and Offices.

1. Military leave pay provided for in Title 35, Section 12, Code of Alabama 1940, is applicable generally to all officers and employees of the State of Alabama, or of any county, municipality, or other agency or political subdivision thereof, who come within its terms.
2. The provisions of Act No. 1, General Acts, Extraordinary Session, 1942, page 7 (pertaining to State officials), Act No. 2, General Acts, Extraordinary Session, 1942, page 9 (pertaining to county officials), and Act No. 8, General Acts, Extraordinary Session, 1942, page 14 (pertaining to municipal officials), which acts permit such officials to enter the military service of the United States when there is an existing state of war between the United States and any other country, without a vacation of office, and provide for the appointment of temporary acting officials, do not affect the above conclusion.
3. Military leave pay provided for in Section 12, supra, begins when the official actually enters into the active service of the armed forces of the United States, and is limited to twenty-one working days at any one time.
4. Military leave pay, based on working days, contemplates the normal working days of any particular official concerned.
5. Receiving of military leave compensation under Section 12, supra, does not have the effect of increasing the compensation of an officer during the term for which he has been elected or appointed under Constitution of Alabama 1901, Section 281, or related constitutional provisions.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of February 28, 1951, is as follows:

"As President of the Etowah County Board of Revenue and under authority of Title 55, Section 240 of the 1940 Code of Alabama and Amendments thereto, I respectfully request an opinion of you on the questions arising from the following statements:

"The Probate Judge of Etowah County, Alabama was a member of the national guard and was, a short time ago, called into active military service with the armed forces. The salary of the Probate Judge of Etowah County is set out in the 1943 Local Acts of the Legislature of Alabama, Pages 73 and 74, which said act was amended by the 1947 Local Acts, Page 74. The Probate Judge was paid his salary up to the date that the now acting Probate Judge was appointed by the Governor and he has now submitted a claim to the Board of Revenue of Etowah County, Alabama for military leave pay under Title 35, Section 12 of the 1940 Code of Alabama.

"Your attention is called to the 1942 General Acts, Special Session, Page 9, your attention is especially called to Section 7 of said Act. Your attention is also called to Article 17, Section 281 of the Constitution of Alabama as shown in Title 1 of the 1940 Code of Alabama.

"The legal questions which arise under the above statement of facts and of which your opinion is requested, are as follows:

- "1. Can the Etowah County Board of Revenue legally pay the Probate Judge in this instance for military leave pay as set forth under Title 35, Section 12 of the 1940 Code of Alabama?
- "2. If your answer to question one is in the affirmative, for how many days pay is the said Probate Judge entitled and on what basis would the daily pay be figured since his yearly salary is paid in equal monthly installments on the basis of five and one-half working days per week?"

I will take this opportunity to answer your inquiries as the same affect State, county, and municipal officials in general, rather than confine this opinion to the Judge of Probate of Etowah County, Alabama.

Answering your first inquiry, as to officials in general, I am of the opinion that the military leave pay provisions of Title 35, Section 12, Code of Alabama 1940, are applicable to all officers and employees of the State of Alabama, or of any county, municipality, or other agency, or political subdivision thereof, who come within its terms.

Title 35, Section 12, *supra*, provides as follows:

"§ 12. Military leave for government employees.—All officers and employees of the State of Alabama, or of any county, municipality, or other agency or political subdivision thereof, who shall be active members of the Alabama national guard or naval militia, or of the officer's reserve

corps of the United States Army or of the United States naval reserves, shall be entitled to military or naval leave of absence from their respective civil duties and occupations on all days that they shall be engaged in field or coast defense or other training or on other service ordered under the provisions of this chapter, or of the national defense act, or of the federal laws governing the United States naval reserves, without loss of pay, time, efficiency rating, annual vacation, or sick leave, but no such person granted such leave of absence with pay shall be paid for more than twenty-one working days at any one time."

It will be noted from the above section that all officers and employees of the State of Alabama, or of any county, municipality, or other agency, or political subdivision thereof, are specifically enumerated. This section in itself includes all such officers and employees. — Quarterly Report of Attorney General, Vol. 34, page 26; Cf. Quarterly Report of Attorney General, Vol. 21, page 34.

The question then presents itself as to whether the provisions of Act. No. 1, General Acts, Extraordinary Session, 1942, page 7 (pertaining to State officials), Act No. 2, General Acts, Extraordinary Session, 1942, page 9 (pertaining to county officials), and Act No. 8, General Acts, Extraordinary Session, 1942, page 14 (pertaining to municipal officials), which acts permit such officials to enter the military service of the United States at a time when there is an existing state of war between the United States and any other country, without a vacation of office, and provide for the appointment of temporary acting officials, have the effect of removing the officials designated, therein, respectively, from the general operation of Section 12, *supra*.

The participation of the United States in the Korean conflict constitutes an "existing state of war" within the meaning of the term used in said acts, permitting State, county, and municipal officials of the State of Alabama to be in the military service of the United States at a time when there is an "existing state of war between the United States of America and any other country" without vacating their offices. — Opinion of the Attorney General to clerk of the Circuit Court, Mobile County, Alabama, dated December 29, 1950 (Ms.). Therefore, each of these acts is now effective.

Section 7 of each of these three acts is identical and provides as follows:

"Section 7. Nothing herein contained, however, shall be deemed to extend the tenure of any such duly elected or appointed official beyond the time for which he has been elected or appointed, nor entitle him to any compensation during the time he is absent in the military service of the United States and until he resumes the duties of his office, nor shall any such official be clothed with any of the powers or authority of his office while absent in the military service."

The proviso in Section 7, *supra*, "nor entitle him to any compensation during the time he is absent in the military service of the United States and until he resumes the duties of his office" in my opinion, is confined to the acts of which Section 7 is a part, and not to other independent statutory provisions. Its purpose was to prevent one from receiving both civil compensation and military compensation by virtue of these acts. The provisions of Section 12, *supra*, pertaining to military leave in general, were not made inoperative by this provision of Section 7, *supra*.

The receiving of the military leave compensation, as provided in Section 12, *supra*, does not, in my opinion, have the effect of increasing the

compensation of an officer during the term for which he has been elected or appointed, within the meaning of Constitution of Alabama 1901, Section 281, or related constitutional provisions. Cf. *State ex rel. Bland v. St. John*, 244 Ala. 269, 13 So. 2nd. 161.

In answer to your second inquiry, it is my opinion that the military leave pay begins when the official actually enters into the active service of the armed forces of the United States. This pay is limited to twenty-one working days at any one time. — Quarterly Report of Attorney General, Vol. 21, page 34, *supra*.

Section 4 of each of the three acts in question is identical and provides as follows:

"Section 4. Should any temporary acting official appointed under the provisions of this act be called into or enter the military service, then the appointing authority as hereinabove defined shall upon being informed in writing that such temporary acting official has or will enter the military service, or upon failure of such temporary acting official to so advise the appointing authority for a period of thirty days after his entry into the military service, shall have the power to appoint another temporary acting official who shall have the same powers, privileges and duties and shall receive the same compensation, payable in the same manner and from the same source as the official in whose place he is serving."

This section does not affect this conclusion. An official who enters into the active military service of the United States, and within thirty days thereafter notifies the appointing authority, or does not notify the appointing authority, cannot begin counting his military leave from the date of notification, or the date of the appointment of the temporary acting official to serve during his absence.

It will be noted that the military leave pay is based on working days, which, in my opinion, means the normal working days of any particular official concerned.

Yours very truly,

SI GARRETT
Attorney General

March 30, 1951

Hon. Bert E. Thomas,
Tax Assessor, Mobile County,
Mobile, Alabama.

Hospitals — Taxation — Exemptions.

The real and personal property of the Mobile Infirmary Association, a charitable nonprofit association, when used exclusively for the purposes for which the association was incorporated, is exempt from ad valorem taxation.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of February 16, 1951, is as follows:

"I am enclosing herewith a copy of the Amended Charter of the Mobile Infirmary Association dated January 28, 1947, together with a copy of an opinion of the Attorney General of March 24, 1934, to Honorable J. W. Hamilton, Tax Collector of Jefferson County, and a copy of a letter from Mr. Harris Burns of Birmingham, Alabama.

"Please advise me if the real and personal property used by the Mobile Infirmary Association in connection with the operation of its hospital property is exempt from ad valorem taxation."

The nature of the business and the objects and purposes of the Mobile Infirmary Association are set out in Article III of the amended charter of said hospital dated January 28, 1947. Section 4 of said article is as follows:

"4. This Association is organized exclusively for charitable, scientific and educational purposes as a non-profit sharing corporation and its activities shall be conducted for the aforesaid purposes in such a manner so that no part of its net earnings will insure (sic) to the benefit of any member, trustee, or officer of the Association, or any individual. It shall not be its purpose to engage in carrying on propaganda or otherwise attempting to influence legislation.

"In order to provide for its maintenance and extend its usefulness and scope of service, the Association shall have the power to make and collect such reasonable charges for board, nursing, and use of hospital facilities, and the services of nurses, physicians and surgeons as may be requisite. Said Association shall have the power and authority to solicit, collect or receive subscriptions in money or otherwise to receive donations and legacies of personal property and/or donations and devises of real property, and/or interest therein, to be used in forwarding any and all of the purposes of the said Association, and to own or hold any land or real estate or interest therein devised to it as may be provided under the terms of any wills, devises, grants and/or donations."

Article V of the amended charter provides:

"No revenues of this Association shall ever be used for any purpose other than the purchase of real and/or personal property, the building, conduct, operation and/or maintenance of hospitals, nurses schools, medical buildings and/or sanitariums and their appurtenances, as set forth in Article III of this charter."

The question presented by your inquiry has been considered on several occasions in opinions of this office. In an opinion dated July 23, 1920, and found in Biennial Report of Attorney General, 1918-20, page 596, the following two types of hospitals were considered:

"1st. A hospital which receives both pay and non-pay patients—The money received from pay patients being used entirely to defray the expenses of operating the hospital—salaries of nurses and physicians, food

and drugs for patients and employees of the institution, etc.—and without any private gain or profit.

"2nd. A hospital operated exactly as the one above described, except that it receives more revenue than is needed to cover the expense of operation and these surplus earnings are used entirely for **other charitable purposes**. None of the excess earnings go as gain or profit to the proprietor."

The above opinion, in holding that both types of hospitals were exempt from ad valorem taxes, considered Constitution of Alabama 1901, Section 91, and Section 2(a) of Act. No. 328, General Acts 1919, page 282. Section 2(a) now appearing, without material change, in Section 2(a) of Title 51, Code of Alabama 1940, as amended by Act No. 639, General Acts 1947, page 491, is as follows:

"Section 2. Persons and property.—The following property and persons shall be exempt from ad valorem taxation and none other: all property, real and personal, used exclusively for religious worship, for schools or for purposes purely charitable; provided, however, property, real of personal, owned by any educational, religious or charitable institution, society or corporation, let for rent or hire or for use for business purposes, shall not be exempt from taxation, notwithstanding the income from such property shall be used exclusively for education, religious or charitable purposes; . . . "

There has been no change in the law that would alter the conclusions (with which I agree) reached in the above opinion.

See also Biennial Report of Attorney General, 1918-20, page 393; Office Edition, Vol. 17, page 111; Quarterly Report of Attorney General, Vol. 9, page 122; Vol. 58, page 91.

In view of the above opinions, it is my conclusion that the real and personal property of the Mobile Infirmary Association used exclusively for the purpose for which the association was incorporated is exempt from ad-valorem taxation.

While not necessary in answering your inquiry, I deem it advisable to add that the exemption from taxation of hospitals as charitable institutions under Constitution of Alabama 1901, Section 91, and Section 2 (a) of Title 51, Code of Alabama 1940, as amended, is not to be confused with the exemption of real and personal property of hospitals under the provisions of Title 51, Section 2 (b)-(1), Code of Alabama 1940, as amended by Act No. 639, General Acts 1947, page 491. Section 2 (b)-(1) is applicable to proprietary hospitals, i. e., hospitals operated by doctors or other persons for profit, which profit is distributed to the stockholders or owners of the hospitals.

Yours very truly,

SI GARRETT
Attorney General.

March 30, 1951

Hon. Bert E. Thomas,
Tax Assessor, Mobile County,
Mobile, Alabama.

Taxation—Tax Assessors—Assessments.

1. Where an assessment covering real property is unsigned during the assessment period (October 1 through December 31), and the tax assessor finds unreported improvements on the real estate, the ten per cent penalty provided in Section 2 of Act No. 91, General and Locals Acts 1949, page 115, attaches to the improvements and such portion of the real estate on which the improvements are located as bears a reasonable relation to such improvements.

2. Under the provisions of Section 2, supra, it is the duty of a person who purchases real estate prior to October 1 of a tax year to report such purchase and assess the property between October 1 and prior to January 1 following such purchase. However, no penalty is provided for the failure to report purchase and assess the property.

3. Where a person sells a portion of the real estate covered by his assessment, there is no duty imposed upon him under the provisions of Act No. 91, supra, to report such sale, and, therefore, no penalty attaches for his failure to report the sale of the same.

4. If a corporation makes no return either of its shares or its tangible personal property during the period provided by law, or on its real estate during the period provided by law, and no improvements have been made on the real estate, the penalty that should be added to the tax value of the personal property and to the residue of such corporation is governed by the provisions of Title 51, Section 52, Code of Alabama 1940 (as to personal property), and Title 51, Section 27, Code of Alabama 1940 (as to residue for purposes of share stock assessment).

5. If a taxpayer, whether an individual or corporation, fails to assess his or its personal property as provided by law, the tax assessor's fee of fifty cents provided in Title 51, Section 49, Code of Alabama 1940, must be charged and collected with the tax.

Opinion by Assistants Attorneys General Arbuthnot and Livingston.

Dear Sir:

Your request for an official opinion bearing date of March 15, 1951, is as follows:

"Since October 1, 1950, Mobile County has been operating under Act No. 91 of the regular 1949 Session of the Legislature. Will you please inform me regarding the following questions as they relate to this Act:

"1. Where an assessment covering real property is unsigned during the assessing period of October 1 through December 31, and this office finds unreported improvements on land, does the 10% penalty adhere to

the improvements alone, to the improvements and to the land on which the improvements are located, or to the entire assessment of which the improvements are a part.

"2. Where a parcel of land has been cut out of the owner's assessment during the assessing period, and the purchaser fails to sign an assessment covering the purchase during the period of October 1 through December 31, does a 10% penalty attach to such an assessment even though no question of additional improvements is involved.

"3. Where a person fails to sign his assessment during the period of October 1 through December 31, and a portion of his assessment covering real property has been cut out to a purchase on the basis of a deed presented at this office during the assessing period of October 1 through December 31, resulting in our having to make an exception on the assessment of such person covering the property sold, does a 10% penalty apply; and if such a penalty does apply, should it be added to the property out of which the conveyance has been made, or to the entire assessment of such person.

"4. In the case of a corporation, where no return has been made, either on the shares of the corporation, or of its tangible personal property during the period of October 1 through the third Monday in January, or on real property during the period of October 1 through December 31, shall a penalty be added to the personal property and to the residue of such corporation, but not to the real property of such corporation where no question of improvements is involved.

"5. Regarding fees, are we correct in concluding that the tax assessor's 50c fee may be added only to assessment of personal property, excepting household goods; and to corporate returns of corporations, where said return is made between the 1st day and third Monday in January, and in the above cases where no assessments is returned by the taxpayer."

The pertinent provisions of Act No. 91, General and Local Acts 1949, page 115, are as follows:

"Section 2. The tax assessor shall have the right and authority after October 1st, 1949 and annually thereafter to assess all real estate, together with the improvements thereon and all furniture and household goods used in and about the curtilage of a home to the party last assessing the same or to the owner of record. The failure of the tax assessor to assess said property of the true owner shall not invalidate the assessment . . . Provided that should the owner of any real estate make improvements on such property or should any improvements be removed or destroyed or partially removed or destroyed during any taxable year it shall be the duty of such owner to notify the tax assessor between October 1st and prior to January 1st of all such changes made subsequent to October 1st of the preceding (sic) tax year.

Improvements partially completed on October 1st shall be reported to the tax assessor and shall be assessed as such. Should any person making improvements on any real estate fail to report same to the tax assessor as required above a ten per cent penalty of the tax value of the real estate and improvements shall be added to the tax value of such property, provided further that it shall be the duty of any person who purchases real estate prior to October 1st of any taxable year and who owns said real estate on that date to report such purchase to and assess

said property with the tax assessor between October 1st and prior to January 1st following such purchase."

"Section 4 . . . (b) Any property that is illegally or improperly claimed as a homestead or which shall become subject to tax and upon which the tax for state purposes has not been paid may be assessed for ad valorem tax for state purpose by the tax assessor as an escape for a period not to exceed five years and in addition to all other penalties, fees, charges and interest allowed by law on escape property assessments shall bear a penalty of fifteen per cent per annum of the taxes due."

All of your inquiries are concerned with penalties. The only penalties provided for in Act No. 91, supra, are:

(1) The ten per cent penalty provided in Section 2 of the Act for failure of a person, making improvements on any real estate, to report the same to the tax assessor as required by said section .

(2) The fifteen per cent penalty provided in Section 4 (b) of the Act for illegally or improperly claiming exempt as a homestead property subject to taxation. (We are not concerned with this penalty in this opinion.)

Under the provisions of Section 2, supra, the owner of any real estate is required to notify the tax assessor, between October 1 and prior to January 1, of any change in the physical status of the property (which term does not include change of ownership). If the physical change in the status of the property is in the nature of improvements, and the owner fails to report the same to the tax assessor during the time specified by law, "a ten per cent penalty of the tax value of the real estate and improvements shall be added to the tax value of such property."

In an opinion of this office dated December 12, 1949, and found in Quarterly Report of Attorney General, Vol. 57, page 95, it was held that:

"Where there is no change in the ownership or physical status of real estate during a tax year, the taxpayer is not required to make any report or return to the tax assessor; and the tax assessor, in such event, assesses the same to the party last assessing it or to the owner of record, without any action of the part of the taxpayer." (Syllabus 4.)

In answer to your first inquiry, it is my opinion that where an assessment covering real property is unsigned during the assessment period (October 1 through December 31), and the tax assessor finds unreported improvements on the real estate the ten per cent penalty provided in Section 2, supra, attaches to the improvements, and such portion of the real estate on which the improvements are located as bears a reasonable relation to such improvements. It could not be said that the penalty attaches only to the improvements, when Section 2 specifically provides that the penalty shall attach to "the tax value of the real estate and improvements." Neither can I conceive that it was the intention of the Legislature that the penalty attach to the tax value of the entire assessment and the improvements when the tax value of the entire assessment bears no reasonable relation to the improvements; for example, if the entire assessment covers ten lots in a subdivision and the improvements are placed only on one of the lots, it was certainly not the intention of the Legislature that the penalty attach to the nine lots on which no improvements were made.

It is my opinion that your second inquiry should be answered in the negative.

While under the provisions of Section 2, *supra*, it is the duty of a person who purchases real estate prior to October 1 of a tax year to report such purchase and assess the property between October 1 and prior to January 1 following such purchases, no penalty is provided for the failure to report the purchase and assess the property. The sale of the property does not extinguish the tax lien. The property is nevertheless liable for the amount of the tax due thereon. Quarterly Report of Attorney General, Vol. 31, page 5; Vol. 42, page 10.

The question presented by your third inquiry is the converse of the question by your second inquiry. The reasoning and conclusions reached in answering your second inquiry are equally applicable to your third inquiry. Therefore, your third inquiry must be answered in the negative.

In answering your fourth inquiry, your attention is called to the fact that Act No. 91, *supra*, relates only to the assessment of real estate, together with improvements thereon, and all furniture and household goods used in and about the curtilage of a home. This Act does not apply to the assessment of other personal property.

Under the provisions of Act No. 91, *supra*, if no improvements have been made on real estate owned by a corporation (as in the instant case), it is not necessary for the corporation to assess its real estate for the purposes of ad valorem taxation. Personal property of a corporation is not assessed under the provisions of Act No. 91, *supra*, but is assessed under the provisions of the general law governing the assessment of personal property. If a corporation fails to assess its personal property as provided by law, it is subject to the penalty provided in Title 51, Section 52, Code of Alabama 1940.

Shares of a corporation are not assessed under the provisions of Act No. 91, *supra*, the assessment of such shares being made under the provisions of Title 51, Sections 25-29, Code of Alabama 1940. If a corporation fails to assess its shares of capital stock as provided by sections, it is subject to the penalty prescribed in Title 51, Section 27, Code of Alabama 1940.

Answering your fourth inquiry, it is my opinion that if a corporation makes no return either on its shares or its tangible personal property during the period provided by law, or on its real property during the period provided by law, and no improvements have been made on the real property, any penalties that should be added to the tax value of the personal property and to the residue of such corporation are governed by the provisions of Section 52, *supra* (as to personal property), and Section 27, *supra* (as to residue for purposes of share stock assessment).

In reference to your fifth inquiry, it will be noted from the above that personal property, other than furniture and household goods used in and about the curtilage of a home, is not assessed under the provisions of Act No. 91, *supra*, but under the general law governing the assessment of personal property. This statement is true as to the assessment of personal property whether it be by an individual taxpayer or a corporation.

Answering your fifth inquiry, it is my opinion that if a taxpayer, whether an individual or corporation, fails to assess his or its personal property as provided by law, the assessor's fee of fifty cents provided in Title 51, Section 49, Code of Alabama 1940, must be charged and collected with the tax.

Yours very truly,

SI GARRETT,
Attorney General.

INDEX

Quarterly Report of Attorney General

January 1, 1951, Through March 31, 1951

Volume 62

—A—

AD VALOREM TAXES:

Charitable, nonprofit hospitals—Exemption from	74
Colleges and universities—Exemption from under Act No. 40, approved October 31, 1950	39
Corporation engaged in amateur theatrical and literary activities—Exempt from	61
Wherry Act Housing Project on Huntsville Arsenal— Not exempt from	42

ACTS (GENERAL AND LOCAL):

LOCAL ACTS 1936:	
Page 24	50
GENERAL ACTS 1942:	
Pages 7, 9, 14	71
GENERAL ACTS 1943:	
Page 199	15
Page 226	10
Page 534	57
GENERAL ACTS 1947:	
Page 515	43
LOCAL ACTS 1947:	
Page 79	24
Page 232	31
GENERAL AND LOCAL ACTS 1949:	
Page 115	77
Page 139	13
Page 190	55
Page 206	63
Page 408	45
Page 467	52
Page 534	59
Page 569	18
Page 819	32
Page 986	5
GENERAL AND LOCAL ACTS 1950:	
No. 28	36

INDEX

(Continued)

	Page
No. 40	39
No. 65	36
 ALABAMA ALCOHOLIC BEVERAGE CONTROL ACT:	
Loss incurred on counterfeit money—Chargeable to operating costs	41
Municipality—Entitled to share of profits from date of incorporation	10
 ALABAMA INSANE HOSPITALS:	
Appropriation under Act No. 28, approved October 25, 1950—Amount—How determined	29
 APPROPRIATIONS:	
Alabama Insane Hospitals—Determination of amount made by Act No. 28, approved October 25, 1950	29
Governor's Contingent Fund—Purposes for which same may be spent	26
Vocational and trade schools—Appropriation under General Acts 1947, p. 515, does not revert	43
 ASSESSMENTS:	
Assessment under General and Local Acts 1949, p. 115, discussed generally	77
 —B— 	
BASTARDY:	
Costs is not payable by Corrections and Institutions	47
 —C— 	
CHILTON COUNTY:	
County Superintendent of Education—General and Local Acts 1949, p. 534, fixing compensation of constitutional	59
Right of way for state highway—May be paid from gas tax reserve by Local Acts 1936, p. 24	50
 CITY BOARDS OF EDUCATION:	
Principal or teacher employed by—May draw per diem as member of Legislature	64

INDEX

(Continued)

	Page
School taxes paid on illegal assessment—May be refunded by	49
 CLAIMS:	
Member of county governing body may swear to for claimant—Procedure inadvisable	58
 CODE OF ALABAMA 1940:	
Title 6:	
Section 13	47
Title 8:	
Section 43	18
Title 12:	
Section 11	8
Section 115	58
Title 23:	
Section 49	45
Title 35:	
Section 12	71
Title 38:	
Section 17	33
Title 45:	
Section 146	24
Title 51:	
Section 2 (a), as amended	42, 74
Section 2 (d), as amended	61
Sections 332, 333	49
Section 755 (b), as amended	65
Section 789 (c), as amended	17
Title 52:	
Section 10	52
Section 23	5
Section 243	35
Title 55:	
Section 179	26
Title 56:	
Section 21	8
 COLLEGES & UNIVERSITIES:	
Taxation—Exemption from under Act No. 40, approved October 31, 1950	39
 COMPENSATION:	
Board of Revenue—Jackson County—Under Act No. 65, approved November 4, 1950	36

INDEX

(Continued)

	Page
CONSTITUTION OF ALABAMA 1901:	
Section 91	74
Section 94	68
Section 194½, as amended	15
CONSTITUTIONAL AMENDMENTS:	
No. 44	24
No. 72	66
Amendment affecting State as a whole—Cost of Governor's Proclamation payable by State	22
Amendment affecting county as a whole—Incidentally affecting municipality—Governor's Proclamation payable by county	22
Amendment applicable to one county alone—Cost of Governor's Proclamation payable by county	22
CONSTITUTIONALITY:	
Chilton County—General and Local Acts 1949, p. 534, fixing compensation of county superintendent of education — Constitutional	59
CONVICTS:	
Good conduct deductions do not apply to indeterminate sentences	57
CORRECTIONS & INSTITUTIONS, DEPARTMENT OF:	
Bastardy—Costs in not payable by	47
Good conduct deductions do not apply to indeterminate sentences	57
COSTS AND FEES:	
Bastardy cases—Not payable by Department of Corrections & Institutions	47
COUNTIES:	
Claim—Member of county governing body may swear to for claimant—Procedure inadvisable	58
Constitutional amendment applicable to one county alone—Cost of Governor's Proclamation payable by	22
Constitutional amendment affecting county as a whole— Incidentally affecting municipality—All costs of Governor's Proclamation payable by	22

I N D E X

(Continued)

	Page
Jackson County—Board of Revenue—Compensation under Act No. 65, approved November 4, 1950	36
Public road vacated in equity court—County may not reopen—May establish new road	3
Residence owned by county occupied by sheriff—May repair from general fund	68
Residence owned by county occupied by sheriff—No authority to repair or equip kitchen	68
Streets—Duty of city and not county to maintain	45

COUNTY BOARDS OF EDUCATION:

Principal or teacher employed by—May draw per diem as member of Legislature	64
Resolution to borrow money—May rescind without recommendation of superintendent	35

COUNTY SUPERINTENDENT OF EDUCATION:

Chilton County—General and Local Acts 1949, p. 534, fixing compensation of constitutional	59
Resolution of county board of education to borrow money—May rescind without recommendation of	35

—D—

DOCKS COMMISSION:

Terminal railroad—Employees may be granted pay in lieu of vacation	33
--	----

—E—

ETOWAH COUNTY:

Sheriffs—Assistants—Salary fixed by Board of Revenue under Local Acts 1947, p. 232	31
--	----

EXEMPTIONS:

Charitable nonprofit hospitals—Exempt from taxation	74
Colleges and universities—Exempt from taxation under Act No. 40, approved October 31, 1950	39
Corporation engaged in amateur theatrical and literary activities—Exempt from	61

I N D E X

(Continued)

	Page
Marshall County Hospital Board—Purchases for hospital exempt from sales tax	65
Veterans—Exempt from poll tax for service during Korean conflict	15
Wherry Act Housing Project on Huntsville Arsenal— Not exempt from taxation.....	42

—F—

FILING TAX:

Assignment of mortgage by national bank to third party— Tax must be paid	62
Mortgage to national bank—Assigned to third party— Judge may accept filing tax though mortgage previously recorded without tax	62

FUNDS:

Governor's Contingent—Purposes for which same may be spent.....	26
---	----

—G—

GAME AND FISH:

Morgan County—Hunting and fishing license fees—Amount collected payable to custodian of public school funds	18
--	----

GOVERNOR:

Contingent Fund—Purposes for which same may be spent.....	26
---	----

—H—

HOSPITALS:

Charitable, nonprofit—Exemption from taxation	74
Hospital tax levied by Marshall County under Amendment No. 72—May not be contributed to tubercular sanitarium outside county	66
Hospital tax levied by Marshall County under Amendment No. 72—May not be used for hospitalization of indigent persons	66
Marshall County Hospital Board—Purchases for hospital exempt from sales tax	65

INDEX

(Continued)

Page

—J—

JACKSON COUNTY:

Board of Revenue—Compensation under Act No. 65, approved November 4, 1950	36
--	----

—L—

LEGISLATURE:

Principal or teacher employed by County Board of Education—May draw per diem as member of	64
Principal or teacher employed by City Board of Education— May draw per diem as member of	64

LICENSES:

Collection agency—Not entitled to refund of unexpired portion of license whether business is deemed legal or illegal	20
Hunting and fishing—Morgan County—Amount collected payable to custodian of public school funds	18

LIMESTONE COUNTY:

Cook and helper preparing food for prisoners—Provided for and paid by county	24
Groceries for feeding prisoners—Payment of	24
Sheriff—Gross assessed value of property without deducting amount in litigation—Basis of salary	55

—M—

MARION COUNTY:

Sales tax levied under General and Local Acts 1949, p. 139— Payment attorney's fee for defending constitutionality	13
---	----

MARSHALL COUNTY:

Hospital tax under Amendment 72—May not be used for hospitalization of indigent persons	56
Hospital tax under Amendment 72—May not be contributed to tubercular sanitarium outside county	66

I N D E X (Continued)

	Page
MERIT SYSTEM:	
Montgomery County—Judge Juvenile & Domestic Relations Court—Not “county elective official” within meaning of Merit System Act	32
Montgomery County—Exemption of clerks in office of elected official	32
MILITARY AND NAVAL AFFAIRS:	
Military leave pay—Applicable to all officers and employees of state, county and city	71
Military leave pay—Begins when officer actually enters service.....	71
Military leave pay—Does not increase compensation of officer receiving	71
Military leave pay—Not affected by General Acts, Ex. Sess., 1942, pp. 7, 9, 14	71
MONTGOMERY COUNTY:	
Judge Juvenile & Domestic Relations Court—Not “county elective official” within meaning of Merit System Act	32
Merit System—Exemption of clerks in office of elected official.....	32
MORGAN COUNTY:	
Hunting and fishing license fees—Amount collected payable to custodian of public school funds	18
MUNICIPALITIES:	
Alabama ABC Store profits—Entitled to share of from date of incorporation	10
Constitutional Amendment affecting county as a whole—Incidentally affecting municipality—All cost of Governor's Proclamation payable by county	22
Streets—Duty of city and not county to maintain	45
—N—	
NATIONAL BANKS:	
Mortgage to—Assigned to third party—Judge may accept filing tax though mortgage previously recorded without tax	62
—O—	
OPINION OVERRULED, MODIFIED & DISTINGUISHED:	
Quarterly Report, Vol. 60, p. 91	62

INDEX

(Continued)

Page

—P—

POLL TAX:

Veterans—Exempt from for service during Korean conflict 15

PRISONS & PRISONERS:

Good conduct deductions do not apply to indeterminate sentences..... 57

Sheriff on salary basis—Groceries for feeding prisons—
Payment of 24

Sheriff on salary basis—Cook and helper preparing food for
prisoners—Provided for and paid by county 24

PUBLICATION:

Constitutional Amendment affecting county as a whole—
Incidentally affecting municipality—All cost of Governor's
Proclamation payable by county 22

Constitutional Amendment affecting State as a whole—Cost
of Governor's Proclamation payable by State 22

Constitutional Amendment applicable to one county alone—
Cost of Governor's Proclamation payable by county 22

—R—

REFUNDS:

Collection agency license—Not entitled to refund of unexpired
portion of license whether business is deemed legal or illegal..... 20

School taxes collected on illegal assessment—May be
refunded by City Board of Education 49

REVENUE, DEPARTMENT OF:

Marion County sales tax levied under general and Local
Acts 1949, p. 139—Payment attorney's fee for defending
constitutionality 13

RIGHTS OF WAY:

Chilton County—State highway—May be paid from gas tax
reserve by Local Acts 1936, p. 24 50

ROADS AND BRIDGES:

Public road vacated in equity court—County may not reopen—
May establish new road 8

Vacation of public road in equity court 8

INDEX

(Continued)

Page

—S—

SALES TAX:

Marion County—Levied under General and Local Acts 1949, p. 139—Payment attorney's fee defending constitutionality	13
Marshall County Hospital Board—Purchases for hospital exempt from	65

SALARIES:

Based on gross assessment of property—Amount in litigation not deductible	55
--	----

SCHOOLS:

Application for federal funds for survey and plans for school construction under Public Law 815—How made	5
Federal funds granted under Public Law 815—State Treasurer to receive—Disbursements of	5
Principal or teacher employed by city or county board of education—May draw per diem as member of Legislature	64
Resolution of county board of education to borrow money— May rescind without recommendation of county superintendent	35
School taxes collected on illegal assessment—May be refunded by city board of education	49
Tax—St. Clair County—Under constitutional amendment— proposed by General & Local Acts, 1949, p. 467— Duration and collection of	52
Vacational and Trade schools—Appropriation under General Acts 1947, p. 515, does not revert	43

SENTENCES:

Good conduct deductions do not apply to indeterminate sentences	57
--	----

SHELBY COUNTY:

Residence owned by county occupied by sheriff— Contingent fund may not be used for repairing and equipping kitchen	68
--	----

SHERIFFS:

Etowah County—Salary fixed by board of revenue under Local Acts 1947, p. 232	31
---	----

INDEX

(Continued)

	Page
Limestone County—Gross assessed value of property without deducting amount in litigation—Basis of salary	56
On salary basis—Cook and helper preparing food for prisoners—Provided for and paid by county	24
On salary basis—Groceries for feeding prisoners—Payment of	24
Residence owned by county and occupied by sheriff—County may repair from general fund	63
STATE AND STATE DEPARTMENT:	
Constitutional amendment affecting State as a whole—Cost of Governor's Proclamation payable by State	22
STATE BOARD OF EDUCATION:	
Application for federal funds for survey and plans for school construction under Public Law 815	5
STATE SUPERINTENDENT OF EDUCATION:	
Application for federal funds for survey and plans for school construction under Public Law 815	5
ST. CLAIR COUNTY:	
School tax—Under constitutional amendment proposed by General and Local Acts 1949, p. 467—Duration and collection of	52
STREETS:	
Duty of city and not county to maintain	45
—T—	
TAX ASSESSORS:	
Assessment under General and Local Acts 1949, p. 115, discussed generally	77
TAXATION:	
Assessment under General and Local Acts 1949, p. 115, discussed generally	77
Charitable, nonprofit hospitals—Exemption from	74
Colleges and universities—Exempt from under Act No. 40, approved October 31, 1950	39
Corporation engaged in amateur theatrical and literary activities—Exempt from	61

INDEX

(Continued)

	Page
Marshall County Hospital Board—Purchases for hospital exempt from sales tax	65
Use tax—Personal property purchased outside state by corporation stored or consumed in Alabama— Subject to	17
Wherry Act Housing Project on Huntsville Arsenal—Subject to	42

—U—

UNITED STATES CODE ANNOTATED:

Title 12, Section 1748(f)	42
---------------------------------	----

USE TAX:

Personal property purchased outside state by corporation stored or consumed in Alabama—Subject to	17
--	----

—V—

VETERANS:

Poll tax—Exempt from for service during Korean conflict.....	15
--	----